TITLE 35—PATENTS

This title was enacted by Act July 19, 1952, ch. 950, § 1, 66 Stat. 792

Part		Sec.
I.	Patent and Trademark Office	1
II.	Patentability of Inventions and Grant of Patents	100
III.	Patents and Protection of Patent Rights	251
IV.	Patent Cooperation Treaty	351 [1]

DISTRIBUTION TABLE

Showing distribution of all sections of former Title 35.

Title 35 former sections	*Title 35 new sections*
1	1
2	2
3	3
4	4
5	5
6	6
7	7
10	8
11	31, 32
11a	33
12	22
13	11
14	10
14a	Omitted
15	12
16	11(a)1
17	Obsolete
18	Repealed
19	Omitted
20	14
21	21
22	Omitted
23	Repealed
31	101, 102, 161
32	102(d), 119, 171
32a	Omitted
32b	prec. ch. 1 note
33	111, 112, 162
34	113, 114
35	115
36	131
37	133, 267
38	Repealed
39	153
40	154
40a to 40d	Omitted
41	151
42–42f	Omitted
43	Omitted
44	152
45	266
46	147
47	261
48	Omitted
49	287
50	292
51	132, 135
52	135
53	23
54	24
55	24
56	24
56a	184
57	134
58, 59	Repealed
59a	141
60	142
61	143
62	144
63	145, 146
64	251, 252
65	253
66	291
67	281, 284
68	See Title 28, § 1498
69	282
70	283–6, 290
71	288
72	102, 104
72a	146, 291
83	171
74	289
75	289
76	114
77	173
78	12, 13, 14
79	42
80–87	Omitted
88	254
89–96	Expired
101–108	Omitted
109	104
110–114	Omitted
115–118	Omitted
118a	Omitted
119	T. 50 App., § 2371
151	181
152	182
153	183
154	184
155	185
156	185
157	186
158	187
159	prec. ch. 1 note

[1] Part IV added without adding Part IV heading to analysis.

CITATION

Section 1 of act July 19, 1952, ch. 950, 66 Stat. 792, provided in part that this title may be cited as "Title 35, United States Code, section—."

SEPARABILITY OF PROVISIONS

Section 3 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that: "If any provision of Title 35, as enacted by section 1 hereof, is declared unconstitutional or is held invalid, the validity of the remainder of this title shall not be affected."

EFFECTIVE DATE; SAVINGS PROVISIONS

Section 4 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that:

"(a) This Act [this title] shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted on such applications. It shall apply to further proceedings on applications pending on such date and to patents granted on such applications except as otherwise provided. It shall apply to unexpired patents granted prior to such date except as otherwise provided.

"(b) Section 102(d) of Title 35, as enacted by section 1 hereof, shall not apply to existing patents and pending applications, but the law previously in effect, namely the first paragraph of R. S. 4887 [first paragraph of former section 32 of this title], shall apply to such patents and applications.

"(c) Section 119, second paragraph, of Title 35 as enacted by section 1 hereof shall not apply to existing patents.

"(d) The period of one year specified in section 102(b) of Title 35 as enacted by section 1 hereof shall

not apply in the case of applications filed before August 5, 1940, and patents granted on such applications, and with respect to such applications and patents, said period is two years instead of one year.

"(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

"(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755) [§ 2011 et seq. of Title 42, The Public Health and Welfare]).

"(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

"(h) The repeal of sections 1—9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3) [sections 151 to 159 of former Title 35, Patents], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act [this title]."

REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that "Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal."

PART I—PATENT AND TRADEMARK OFFICE

Chap.		Sec.
1.	Establishment, Officers, Functions	1
2.	Proceedings in the Patent and Trademark Office	21
3.	Practice Before the Patent and Trademark Office.....	31
4.	Patent Fees.....	41

AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in part heading and in headings for chapters 2 and 3.

CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

Sec.
1. Establishment.
2. Seal.
3. Officers and employees.
4. Restrictions on officers and employees as to interest in patents.
[5. Repealed.]
6. Duties of Commissioner.
7. Board of Appeals.
8. Library.
9. Classification of patents.
10. Certified copies of records.
11. Publications.
12. Exchange of copies of patents with foreign countries.
13. Copies of patents for public libraries.
14. Annual report to Congress.

AMENDMENTS

1972—Pub. L. 92-310, title II, § 208(b), June 6, 1972, 86 Stat. 203, eliminated item 5.

CROSS REFERENCES

Access to facilities for study, research and illustration in the Patent and Trademark Office, see section 91 of Title 20, Education.

Audit of accounts of salaries and expenses of Patent and Trademark Office, see section 72 of Title 31, Money and Finance.

Constitutional provisions, see Const. Art. 1, § 8, cl. 8.

Department of Commerce, jurisdiction and supervision of the Patent and Trademark Office, see section 1511 of Title 15, Commerce and Trade.

Opinions of Court of Customs and Patent Appeals, record in Patent and Trademark Office, see section 216 of Title 28, Judiciary and Judicial Procedure.

Records, books, etc., of Patent and Trademark Office, admissibility of copies as evidence, see section 1744 of Title 28.

§ 1. Establishment

The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

(July 19, 1952, ch. 950, 66 Stat. 792; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word "all" is omitted from the corresponding section of the existing statute and "except as otherwise provided by law" added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word "models" has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word "things."

The phrase "and to trade-mark registrations" is added. There is no enactment corresponding to this section in the trade-mark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trade-marks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

CHANGE OF NAME

Section 3 of Pub. L. 93-596 provided that: "The terms 'Patent Office' and 'Commissioner of Patents' in all laws of the United States shall mean 'Patent and Trademark Office' and 'Commissioner of Patents and Trademarks', respectively."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 2. Seal

The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

(July 19, 1952, ch. 950, 66 Stat. 792; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 3 (R.S. 478).

"Certificates of trade-mark registrations" is added, see note under section 1. Changes in language are made and the specific date eliminated.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Patents issued under seal of Patent and Trademark Office, see section 153 of this title.

§ 3. Officers and employees

(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and not more than fifteen examiners-in-chief. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

(July 19, 1952, ch. 950, 66 Stat. 792; Sept. 6, 1958, Pub. L. 85-933, § 1, 72 Stat. 1793; Sept. 23, 1959, Pub. L. 86-370, § 1(a), 73 Stat. 650; Aug. 14, 1964, Pub. L. 88-426, title III, § 305(26), 78 Stat. 425; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-601, § 1, 88 Stat. 1956.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, § 1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, § 1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, § 1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., § 7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. "Assistant commissioners" is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (c), is act Oct. 28, 1949, ch. 782, 63 Stat. 972, as amended, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office", and "Commissioner of Patents and Trademarks" for "Commissioner of Patents", wherever appearing.

Subsec. (a). Pub. L. 93-601 designated former first par. as subsec. (a), and as so designated, redesignated the first assistant commissioner as a Deputy Commissioner, granted authority for the appointment of not more than fifteen examiners-in-chief to the Secretary of Commerce instead of the President, and struck out provision relating to the performance by the assistant commissioners of duties assigned by the Commissioner.

Subsec. (b). Pub. L. 93-601 designated former second par. as subsec. (b).

Subsec. (c). Pub. L. 93-601 designated former third par. as subsec. (c).

1964—Pub. L. 88-426 repealed provisions which prescribed the annual rate of compensation of the Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased the number of examiners-in-chief from nine to not more than fifteen and specified the annual compensation of the Commissioner.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: "This Act [amending sections 3, 7, and 151 of this title, and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments."

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: "Sections 1 [which amended sections 3 and 7 of this title and is set out in part below], 3 [which added cls. (46), (47) to subsec. (a) of section 2205 of former Title 5, Executive Departments and Government Officers and Employees, added cl. (10) to (16) to subsec. (b) of section 2205 of former title 5, and amended section 2208(c)(1), (18), (20) of former title 5], and 6 [which amended sections 1082 (33), (34) and 2353(b) of former title 5] of this Act shall become effective on the first

day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959]."

EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that:

"The amendments made by this section [to this section and to section 7 of this title] shall not affect—

"(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

"(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments."

CROSS REFERENCES

Classification and compensation of civil service employees, see section 5101 et seq. of Title 5, Government Organization and Employees.

Compensation of Commissioner, see section 5316 of Title 5.

Employment of clerks and employees in governmental departments, see section 3101 of Title 5.

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

[§ 5. Repealed. Pub. L. 92-310, title II, § 208(a), June 6, 1972, 86 Stat. 203]

Section, act July 19, 1952, ch. 950, 66 Stat. 793, related to the bond of the Commissioner and other officers.

§ 6. Duties of Commissioner

(a) The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies and programs regarding domestic and international patent and trademark law; and shall have charge of property belonging to the Patent and Trademark Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

(b) The Commissioner, under the direction of the Secretary of Commerce, may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

(c) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent and Trademark Office, not to exceed $100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States.

(d) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, allocate funds appropriated to the Patent Office, to the Department of State for the purpose of payment of the share on the part of the United States to the working capital fund established under the Patent Cooperation Treaty. Contributions to cover the share on the part of the United States of any operating deficits of the International Bureau under the Patent Cooperation Treaty shall be included in the annual budget of the Patent Office and may be transferred by the Commissioner, under the direction of the Secretary of Commerce, to the Department of State for the purpose of making payments thereof to the International Bureau.

(July 19, 1952, ch. 950, 66 Stat. 793; Oct. 5, 1971, Pub. L. 92-132, 85 Stat. 364; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 2, 89 Stat. 690.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of subsec. (d) as added by Pub. L. 94-131, § 2, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 (R.S. 481 and 483).

The two sections are combined into one with some changes in language.

"And the registration of trademarks" is added, see note under section 1.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (c). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 94-131 added subsec. (d).

1971—Subsec. (a). Pub. L. 92-132 designated existing par. as subsec. (a) and authorized the Commissioner, under direction of Secretary of Commerce, to carry on studies and programs regarding domestic and international patent and trademark laws.

Subsecs. (b), (c). Pub. L. 92-132 added subsecs. (b) and (c).

CHANGE OF NAME

References to the Patent Office in subsec. (d) deemed references to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 7. Board of Appeals

The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the deputy commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings.

Whenever the Commissioner considers it necessary to maintain the work of the Board of Appeals current, he may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Appeals. Not more than one such primary examiner shall be a member of the Board of Appeals hearing an appeal. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each designated examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended. The per annum rate of basic compensation of each designated examiner-in-chief shall be adjusted, at the close of the period for which he was designated to act as examiner-in-chief, to the per annum rate of basic compensation which he would have been receiving at the close of such period if such designation had not been made.

(July 19, 1952, ch. 950, 66 Stat. 793; Sept. 6, 1958, Pub. L. 85-933, § 2, 72 Stat. 1793; Sept. 23, 1959, Pub. L. 86-370, § 1(b), 73 Stat. 650; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-601, § 2, 88 Stat. 1956.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 7 (R.S. 482, amended (1) Mar. 2, 1927, ch. 273, § 3, 44 Stat. 1335, (2) April 11, 1930, ch. 132, § 2, 46 Stat. 155, (3) Mar. 4, 1950, ch. 50, 64 Stat. 11).

Some changes in language have been made and the reference to interferences, which are no longer considered by the Board of Appeals, has been deleted. Reference to reissues is omitted in view of the general provision in section 251.

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in text, is act Oct. 28, 1949, ch. 782, 63 Stat. 972, as amended, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1975—Pub. L. 93-601 added provisions relating to the appointment of the examiners-in-chief under the classified civil service, and addition of the deputy commissioner to the Board of Appeals.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of designated examiners-in-chief at rates not higher than the maximum rate for grade 16 of the General Schedule.

1958—Pub. L. 85-933 permitted temporary designees to be paid the salary received by permanent examiners-in-chief while so serving and provided for compensation adjustments in their regular classifications following such service.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-601 effective Jan. 2, 1975, with examiners-in-chief in office on such date to continue with existing appointment, see section 4(b) of Pub. L. 93-601, set out as an Effective Date of 1975 Amendment note under section 3 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-370 effective on the first day of the first pay period which begins after Sept. 23, 1959, see section 7(b) of Pub. L. 86-370, set out as an Effective Date of 1959 Amendment note under section 3 of this title.

EXISTING POSITIONS

Existing positions, compensation, and appointments unaffected by amendment by Pub. L. 86-370 until action is taken under such amendment, see note set out under section 3 of this title.

CROSS REFERENCES

Appeal to Board of Appeals, see section 134 of this title.

§ 8. Library

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 10 (R.S. 486).

Some change in language has been made. "Purchased" is changed to "maintained" to include the existing library and keeping it up by additions. The phrase "and other" is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Library of Patent and Trademark Office, binding of books, see section 501 of Title 44, Public Printing and Documents.

§ 9. Classification of patents

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 note (June 10, 1898, ch. 430, § 1, 30 Stat. 440).

Changes in language are made.

§ 10. Certified copies of records

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 14 (Mar. 3, 1891, ch. 541, § 1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Fees for certified copies, see section 41 of this title.

§ 11. Publications

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 13 and 16 (R.S. 489; July 9, 1947, ch. 211, § 301 (part), 61 Stat. 299, repeated in prior and subsequent appropriation acts).

Section is amplified to list the publications of the Patent Office, based on 44 U.S.C., 1946 ed., §§ 283, 283a.

The second sentence of item 1 of the revised section is a provision appearing annually in appropriation acts to enable the Patent Office to maintain a small printing press to place headings on drawings before the drawings are reproduced.

Language is changed.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office", wherever appearing.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Exchange of Official Gazette for scientific or useful publications, see section 481 of Title 40, Public Buildings, Property, and Works.

Printing and publications for Patent and Trademark Office, see sections 1337, 1338 of Title 44, Public Printing and Documents.

§ 12. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

(July 19, 1952, ch. 950, 66 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 15, and 78, part (Jan. 14, 1915, 38 Stat. 1221; Feb. 18, 1922, ch. 58, § 9, proviso in, 42 Stat. 393).

The first act mentioned applies to Canada only, the second to any country; these are consolidated in one section, specific reference to one country not being necessary.

Language is changed.

§ 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(a)9 of this title.

(July 19, 1952, ch. 950, 66 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 78, part (R.S. 4934, Feb. 18, 1922, ch. 58, § 9, 42 Stat. 389, 393, amended June 15, 1950, ch. 249, 64 Stat. 215).

The proviso in the schedule of fees of the existing statute is made a separate section and some changes in language are made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

§ 14. Annual report to Congress

The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.

(July 19, 1952, ch. 950, 66 Stat. 794.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 20 (R.S. 494).

Language is changed. The lists referred to in the corresponding section of existing statute, and which are omitted from the revised section, are the indexes provided for in section 11(a)4. The month of reporting is omitted. The report contemplated by R.S. 494 has been discontinued since 1925 under authority of 44 U.S.C., 1946 ed., § 212.

CROSS REFERENCES

Printing and distribution of the report of the Commissioner, see section 1337 of Title 44, Public Printing and Documents.

Provisions applicable to all the Departments, relating to the time of making annual reports, see section 2952 of Title 5, Government Organization and Employees.

CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

Sec.
21. Day for taking action falling on Saturday, Sunday, or holiday.
22. Printing of papers filed.
23. Testimony in Patent and Trademark Office cases.
24. Subpoenas, witnesses.
25. Declaration in lieu of oath.
26. Effect of defective execution.

AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in chapter heading and in item 23.

1964—Pub. L. 88-292, § 2, Mar. 26, 1964, 78 Stat. 171, added items 25 and 26.

§ 21. Day for taking action falling on Saturday, Sunday, or holiday

When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 21 (Mar. 2, 1927, ch. 273, § 14, 44 Stat. 1337).

"Fixed by statute" is omitted from the corresponding section of the existing statute as unnecessary. Saturday is added as a day on which action need not be taken.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of this title.

CROSS REFERENCES

Federal holidays, see section 6103 of Title 5, Government Organization and Employees.

§ 22. Printing of papers filed

The Commissioner may require papers filed in the Patent and Trademark Office to be printed or typewritten.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 12 (R.S. 488).

Language is changed and "or typewritten" is added after "printed."

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 23. Testimony in Patent and Trademark Office cases

The Commissioner may establish rules for taking affidavits and depositions required in cases in the Patent and Trademark Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 53 (R.S. 4905).

This section is placed in part 1 since it relates to trade-mark cases in the Patent Office as well as to patent cases.

Language is changed.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in section catchline and text.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Regulations for the conduct of proceedings in Patent and Trademark Office, establishment of, see section 6 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken, see rule 28, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 24. Subpoenas, witnesses

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 54, 55 and 56 (R.S. 4906, amended Feb. 18, 1922, ch. 58, § 7, 42 Stat. 389, 391-2; R.S. 4907; R.S. 4908).

Three sections of the existing statute are combined with some changes in language and placed in part 1 since they apply to trade-mark cases in the Patent Office as well as to patent cases. Reference to a repealed statute in the first paragraph is replaced by reference to the Federal Rules of Civil Procedure and certain rules are made applicable.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Fees of witnesses, see sections 1821, 1823, and 1825 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 374.

§ 25. Declaration in lieu of oath

(a) The Commissioner may by rule prescribe that any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Commissioner may prescribe, such declaration to be in lieu of the oath otherwise required.

(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001).

(Added Pub. L. 88-292, § 1, Mar. 26, 1964, 78 Stat. 171, and amended Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 26. Effect of defective execution

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be executed in a specified manner may be provisionally accepted by the Commissioner despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Added Pub. L. 88-292, § 1, Mar. 26, 1964, 78 Stat. 171, and amended Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trade mark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

Sec.
31. Regulations for agents and attorneys.
32. Suspension or exclusion from practice.
33. Unauthorized representation as practitioner.

AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in chapter heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 500.

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent and Trademark Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11 (R.S. 487, amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).

The present statute is divided into two sections, 31 and 32.

Changes in language are made.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32 of this title; title 5 section 500.

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 35, U.S.C. 1946 ed., § 11 (R.S. 487 amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).

See note under section 31.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense.

(July 19, 1952, ch. 950, 66 Stat. 796; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11a (May 9, 1938, ch. 188, 52 Stat. 342).

This is a criminal statute. The language has been considerably simplified and the upper limit of the penalty is increased.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Advertising practice before departments or offices of Government, see section 501 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

CHAPTER 4—PATENT FEES

Sec.
41. Patent fees.
42. Payment of patent fees; return of excess amounts.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design cases, $65; in addition on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2, for each claim

(whether independent or dependent) which is in excess of ten. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

2. For issuing each original or reissue patent, except in design cases, $100; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawing.

3. In design cases:

a. On filing each design application, $20.

b. On issuing each design patent: For three years and six months, $10; for seven years, $20; and for fourteen years, $30.

4. On filing each application for the reissue of a patent, $65; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

5. On filing each disclaimer, $15.

6. On appeal for the first time from the examiner to the Board of Appeals, $50; in addition, on filing a brief in support of the appeal, $50.

7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

8. For certificate under section 255 or under section 256 of this title, $15.

9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 50 cents per copy; for design patents, 20 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, $20; where the document relates to more than one patent or application, $3 for each additional item.

11. For each certificate, $1.

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent and Trademark Office, not specified above.

(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof.

(July 19, 1952, ch. 950, 66 Stat. 796; July 24, 1965, Pub. L. 89-83, §§ 1, 2, 79 Stat. 259; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 3, 89 Stat. 690.)

Effective Date of 1975 Amendment

For effective date of amendment of item 1 of subsec. (a) by Pub. L. 94-131, § 3, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 78 (R.S. 4934, amended (1) May 27, 1908, ch. 200, § 1 (part) 35 Stat. 317, 343; (2) June 25, 1910, ch. 414, § 2, 35 Stat. 843; (3) Feb. 18, 1922, ch. 58, § 9, 42 Stat. 389, 393; (4) Feb. 14, 1927, ch. 139, § 2, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, ch. 273, § 13, 44 Stat. 1335, 1337; (6) April 11, 1930, ch. 132, § 3, 46 Stat. 155; (7) June 30, 1932, ch. 314, §§ 308, 309, 47 Stat. 382, 410; (8) Aug. 9, 1939, ch. 619, § 3, 53 Stat. 1293; July 5, 1946, ch. 541, § 301 (part), 60 Stat. 446, 471).

The items in the schedule of fees are rearranged in a few instances and are numbered for convenient reference.

The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

The fee for appeal to the Board of Appeals is changed from $15 to $25.

Two provisos in the corresponding section of the existing statute have been made separate sections, see sections 12 and 13.

The fee for a certificate is changed from 50 cents to $1 to correspond to the same fee in the trade-mark statute.

A new item (8) is added to go with section 205.

An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

The fee for reissue applications is changed slightly.

Amendments

1975—Subsec. (a)1. Pub. L. 94-131 inserted sentence respecting consideration of a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom as separate dependent claims in accordance with the number of claims to which reference is made for the purpose of computing fees.

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1965—Subsec. (a)1. Pub. L. 89-83, § 1, increased the filing fee for original patents from $30 to $65, changed the additional fee from $1 for each claim in excess of twenty to $10 for each claim in independent form which is in excess of one and $2 for each claim (whether independent or dependent) which is in excess of ten, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)2. Pub. L. 89-83, § 1, applied the issue fee to reissue patents as well as to original patents, increased such fee from $30 to $100, and changed the additional fee from $1 for each claim in excess of twenty to $10 for each page (or portion thereof) of specification as printed and $2 for each sheet of drawing.

Subsec. (a)3. Pub. L. 89-83, § 1, changed the fee structure applicable to design patents from a filing fee of $10, $15, or $30 for terms of 3½, 7, or 14 years, respectively, to a filing fee of $20 and an issue fee of $10, $20, or $30 for terms of 3½, 7, or 14 years, respectively.

Subsec. (a)4. Pub. L. 89-83, § 1, increased the filing fee for reissue patents from $30 to $65, changed the additional fee from $1 for each claim in excess of twenty over and above the number of claims in the original patent to $10 for each claim in independent form which is in excess of the number of independent claims of the original patent and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of

claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89–83, § 1, increased the fee for filing disclaimers from $10 to $15.

Subsec. (a)6. Pub. L. 89–83, § 1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from $25 to $50, and added the additional $50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89–83, § 1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from $10 to $15.

Subsec. (a)8. Pub. L. 89–83, § 1, added the fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from $10 to $15.

Subsec. (a)9. Pub. L. 89–83, § 1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89–83, § 1, changed the recording fee from $3 for every document not exceeding six pages and $1 for each additional two pages or less to a flat $20 fee for every document, and substituted a $3 fee for each additional item where the document relates to more than one patent or application for a 50 cents additional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89–83, § 2, added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89–83 provided that:

"(a) This Act [amending sections 41, 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

"(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

"(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

"(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113 (a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act."

CROSS REFERENCES

Issue of patents without fee to Government employees, see section 266 of this title.

Payment of final fee, see section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13 of this title.

§ 42. Payment of patent fees; return of excess amounts

All patent fees shall be paid to the Commissioner who, except as provided in sections 361(b) and 376(b) of this title, shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

(July 19, 1952, ch. 950, 66, Stat. 796; Nov. 14, 1975, Pub. L. 94–131, § 4, 89 Stat. 690.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of section by Pub. L. 94–131, § 4, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94–131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

AMENDMENTS

1975—Pub. L. 94–131 inserted the exception provision, ", except as provided in sections 361(b) and 376(b) of this title,".

CROSS REFERENCES

Deposit of Patent and Trademark Office fees in Treasury to appropriately designated trust-fund receipt accounts, and availability for refunds, etc., see section 725r of Title 31, Money and Finance.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Chap.		Sec.
10.	Patentability of Inventions	100
11.	Application for Patent	111
12.	Examination of Applications	131
13.	Review of Patent and Trademark Office Decisions	141
14.	Issue of Patent	151
15.	Plant Patents	161
16.	Designs	171
17.	Secrecy of Certain Inventions and Filing Applications Abroad [1]	181

AMENDMENTS

1975—Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.
100. Definitions.
101. Inventions patentable.
102. Conditions for patentability; novelty and loss of right to patent.
103. Conditions for patentability; non-obvious subject matter.
104. Invention made abroad.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

[1] So in original. Does not conform to chapter heading.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase "invention or discovery" and its derivatives throughout the revised title. The present statutes use the phrase "invention or discovery" and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word "art" has been replaced by "process", which is defined in section 100. The word "art" in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. "Process" has been used as its meaning is more readily grasped than "art" as interpreted, and the definition in section 100(b) makes it clear that "process or method" is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

CROSS REFERENCES

Design patents, see section 171 et seq. of this title.

Issue of patent generally, see section 151 et seq. of this title.

Plant patents, see section 161 et seq. of this title.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

(July 19, 1952, ch. 950, 66 Stat. 797; July 28, 1972, Pub. L. 92-358, § 2, 86 Stat. 502; Nov. 14, 1975, Pub. L. 94-131, § 5, 89 Stat. 691.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of par. (e) by Pub. L. 94-131, § 5, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Paragraphs (a), (b), and (c) are based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

No change is made in these paragraphs other than that due to division into lettered paragraphs. The interpretation by the courts of paragraph (a) as being more restricted than the actual language would suggest (for example, "known" has been held to mean "publicly known") is recognized but no change in the language is made at this time. Paragraph (a) together with section 104 contains the substance of Title 35, U.S.C., 1946 ed., § 72 (R.S. 4923).

Paragraph (d) is based on Title 35, U.S.C., 1946 ed., § 32, first paragraph (R.S. 4887 (first paragraph), amended (1) Mar. 3, 1897, ch. 391, § 3, 29 Stat. 692, 693, (2) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (3) June 19, 1936, ch. 594, 49 Stat. 1529).

The section has been changed so that the prior foreign patent is not a bar unless it was granted before the filing of the application in the United States.

Paragraph (e) is new and enacts the rule of *Milburn v. Davis-Bournonville*, 270 U.S. 390, by reason of which a United States patent disclosing an invention dates from the date of filing the application for the purpose of anticipating a subsequent inventor.

Paragraph (f) indicates the necessity for the inventor as the party applying for patent. Subsequent sections permit certain persons to apply in place of the inventor under special circumstances.

Paragraph (g) is derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391,

§ 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212), the second defense recited in this section. This paragraph retains the present rules of law governing the determination of priority of invention.

Language relating specifically to designs is omitted for inclusion in subsequent sections.

AMENDMENTS

1975—Par. (e). Pub. L. 94-131 inserted provision for nonentitlement to a patent where the invention was described in a patent granted on an international application by another who has fulfilled the requirements of pars. (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1972—Subsec. (d). Pub. L. 92-358 added reference to inventions that were the subject of an inventors' certificate.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(b) of Pub. L. 92-358 provided that: "Section 2 of this Act [which amended this section] shall take effect six months from the date when Articles 1 to 12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States."

SAVINGS PROVISIONS

Section 4 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that subsection (d) of this section should not apply to existing patents and pending applications, but that the law previously in effect, namely the first paragraph of R.S. 4887 [first paragraph of section 32 of this title], should apply to such patents and applications. Said paragraph of section 32 provided that:

"No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 31 of this title, and six months in cases of designs, prior to the filing of the application in this country, in which case no patent shall be granted in this country."

CROSS REFERENCES

Abandonment of invention for unauthorized disclosure, see section 182 of this title.

Benefit of earlier filing date in foreign country; right of priority, see section 119 of this title.

Filing application in foreign country, see section 184 of this title.

Interferences, see section 135 of this title.

Time of prior use or publication for design patents, see section 172 of this title.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, but patents issued with earlier filing dates not effective as prior art under subsec. (e) of this section of such earlier filing dates, see note set out under section 111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 375 of this title.

§ 103. Conditions for patentability; non-obvious subject matter

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

(July 19, 1952, ch. 950, 66 Stat. 798.)

HISTORICAL AND REVISION NOTES

There is no provision corresponding to the first sentence explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention or lack of patentable novelty has been followed since at least as early as 1850. This paragraph is added with the view that an explicit statement in the statute may have some stabilizing effect, and also to serve as a basis for the addition at a later time of some criteria which may be worked out.

The second sentence states that patentability as to this requirement is not to be negatived by the manner in which the invention was made, that is, it is immaterial whether it resulted from long toil and experimentation or from a flash of genius.

CROSS REFERENCES

Description of invention, see section 112 of this title.

§ 104. Invention made abroad

In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.

(July 19, 1952, ch. 950, 66 Stat. 798; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 6, 89 Stat. 691.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of first sentence by Pub. L. 94-131, § 6, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 109 (Aug. 8, 1946, ch. 910, 60 Stat. 943).

Language has been changed and the last sentence has been broadened to refer to persons serving in connection with operations by or on behalf of the United States, instead of solely in connection with the prosecution of the war.

AMENDMENTS

1975—Pub. L. 94-131 inserted in the exception provision reference to section 365 of this title relating to priority of applications having benefit of filing date of prior applications.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

CHANGE OF NAME

Reference to the Patent Office deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Benefit of filing date in foreign country, see section 119 of this title.

Filing application in foreign country, see section 184 of this title.

CHAPTER 11—APPLICATION FOR PATENT

Sec.
111. Application for patent.
112. Specification.
113. Drawings.
114. Models, specimens.
115. Oath of applicant.
116. Joint inventors.
117. Death or incapacity of inventor.
118. Filing by other than inventor.
119. Benefit of earlier filing date in foreign country; right of priority.
120. Benefit of earlier filing date in the United States.
121. Divisional applications.
122. Confidential status of applications.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 371, 373, 375 of this title.

§ 111. Application for patent

Application for patent shall be made by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be signed by the applicant and accompanied by the fee required by law.

(July 19, 1952, ch. 950, 66 Stat. 798.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958; (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The corresponding section of existing statute is divided into an introductory section relating to the application generally (this section) and a section on the specification (sec. 112).

The parts of the application are specified and the requirement for signature is placed in this general section so as to insure that only one signature will suffice.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT, TRADEMARK, AND OTHER FEDERAL CASES

Pub. L. 92-34, June 30, 1971, 85 Stat. 87, as amended by Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, provided that:

"Section 1 [Claim and verified statement for benefit of earlier filing date; prior art; evidence of entitled filing date in any proceedings]. (a) A patent or trademark application shall be considered as having been filed in the United States Patent and Trademark Office on the date that it would have been received by the Patent and Trademark Office except for the delay caused by the emergency situation affecting the postal service which began on March 18, 1970, and ended on or about March 30, 1970, if a claim is made for the benefit of an earlier date in accordance with subsections (b) and (c) of this section. Patents issued with earlier filing dates afforded by this section shall not be effective as prior art under subsection 102(e) of title 35 of the United States Code [section 102(e) of this title] as of such earlier filing dates.

"(b) No patent or trademark application, patent, or trademark registration shall be entitled to an earlier filing date under this section unless a verified statement by the applicant or owner of record claiming the filing date to which the application is believed to be entitled is filed in the Patent and Trademark Office within six months after enactment of this Act [June 30, 1971]. Such statement shall be maintained in the file of the application in the Patent and Trademark Office and shall be referred to in the patent or trademark registration when practicable.

"(c) When a statement filed under subsection (b) of this section appears unreasonable or defective on its face, or when the filing date of the patent or trademark application, patent, or trademark registration is called into question or is material in any inter partes proceeding in the Patent and Trademark Office or any proceeding in the courts, the applicant or owner of such application, patent, or trademark registration may be required to present evidence establishing the filing date to which the application is entitled. The filing date to which the application is entitled shall be determined on the basis of such evidence and any evidence introduced by an opposing party. The evidence shall be presented as directed by the Commissioner of Patents and Trademarks in proceedings in the Patent and Trademark Office or as directed by the courts in proceedings in the courts.

"Sec. 2 [Delayed fees or actions, excusal; relief request, date; applicability to Federal laws; determination of relief]. (a) Except for the filing of a patent or trademark application, if any action is taken or any fee is paid in the United States Patent and Trademark Office later than the end of a time period specified in the statutes set forth in subsecion (b) of this section for taking such action or paying such fee, and no provision exists in law for excusing such delay, the delay may be excused if it is determined that it was caused by the emergency situation affecting postal service which began on March 18, 1970 and ended on or about March 30, 1970. Relief under this section must be requested by a verified statement filed in the Patent and Trademark Office by the patent or trademark applicant or owner within six months after enactment of this Act [June 30, 1971].

"(b) This section is applicable to title 35, United States Code, 'Patents'; the Trademark Act of 1946, ch. 540, 60 Stat. 427, as amended [section 1051 et seq. of Title 15, Commerce and Trade]; the Atomic Energy Act of 1954, Pub. L. 83-703, 68 Stat. 919, as amended [section 2011 et seq. of Title 42, The Public Health and Welfare]; and the National Aeronautics and Space Act, Pub. L. 85-568, 72 Stat. 426 (1958), as amended [section 2451 et seq. of Title 42]. In cases involving the Atomic Energy Act of 1954 [section 2011 et seq. of Title 42] or the National Aeronautics and Space Act [section 2451 et seq. of Title 42], determinations of relief shall be made by a Board of Patent Interferences. In other cases determinations shall be made by the Commissioner of Patents and Trademarks.

"Sec. 3 [Regulations]. The Commissioner of Patents and Trademarks may establish regulations for administering this Act."

CROSS REFERENCES

Fees, see sections 41 and 42 of this title.

Provisions of this chapter applicable to applications for reissue of patents, see section 251 of this title.

§ 112. Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

(July 19, 1952, ch. 950, 66 Stat. 798; July 24, 1965, Pub. L. 89-83, § 9, 79 Stat. 261; Nov. 14, 1975, Pub. L. 94-131, § 7, 89 Stat. 691.)

Effective Date of 1975 Amendment

For effective date of amendment of second sentence of second paragraph by Pub. L. 94-131, § 7, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958; (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The sentence relating to signature of the specification is omitted in view of the general requirement for a signature in section 111.

The last sentence is omitted for inclusion in the chapter relating to plant patents.

The clause relating to machines is omitted as unnecessary and the requirement for disclosing the best mode of carrying out the invention is stated as generally applicable to all types of invention (derived from Title 35, U.S.C., 1946 ed., § 69, first defense).

The clause relating to the claim is made a separate paragraph to emphasize the distinction between the description and the claim or definition, and the language is modified.

A new paragraph relating to functional claims is added.

Amendments

1975—Pub. L. 94-131 substituted provision authorizing the writing of claims, if the nature of the case admits, in dependent or multiple dependent form for prior provision for writing claims in dependent form, required claims in dependent form to contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed, substituted text respecting construction of a claim in dependent form so as to incorporate by reference all the limitations of the claim to which it refers for prior text for construction of a dependent claim to include all the limitations of the claim incorporated by reference into the dependent claim, and added paragraph respecting certain requirements for claims in multiple dependent form.

1965—Pub. L. 89-83 permitted a claim to be written in independent or dependent form, and if in dependent form, required it to be construed to include all the limitations of the claim incorporated by reference into the dependent claim.

Effective Date of 1965 Amendment

Amendment by Pub. L. 89-83 effective three months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

Cross References

Amendment introducing new matter in disclosure, see section 132 of this title.

Amendments generally, see section 251 et seq. of this title.

Annexation of specification to issued patent, see section 154 of this title.

Description of plant patents, see section 162 of this title.

Disclaimer, see section 253 of this title.

Reissue of defective patents, see section 251 of this title.

Section Referred to in Other Sections

This section is referred to in sections 41, 111, 120, 162, 282 of this title.

§ 113. Drawings

The applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented. When the nature of such subject matter admits of illustration by a drawing and the applicant has not furnished such a drawing, the Commissioner may require its submission within a time period of not less than two months from the sending of a notice thereof. Drawings submitted after the filing date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.

(July 19, 1952, ch. 950, 66 Stat. 799; Nov. 14, 1975, Pub. L. 94-131, § 8, 89 Stat. 691.)

Effective Date of 1975 Amendment

For effective date of amendment of section by Pub. L. 94-131, § 8, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 34, part (R.S. 4889, amended Mar. 3, 1915, ch. 94, § 2, 38 Stat. 958).

The requirement for signature in the corresponding section of existing statute is omitted; regulations of the Patent Office can take care of any substitute. A redundant clause is omitted.

AMENDMENTS

1975—Pub. L. 94-131 substituted provisions respecting drawings requiring necessary-for-understanding drawings and submission of drawings within prescribed time period and limiting use of drawings submitted after filing date of application for prior provision requiring the applicant to furnish a drawing when the nature of the case admitted it.

CROSS REFERENCES

Annexation of drawings to issued patent, see section 154 of this title.
Design patents, see section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 111 of this title.

§ 114. Models, specimens

The Commissioner may require the applicant to furnish a model of convenient size to exhibit advantageously the several parts of his invention.

When the invention relates to a composition of matter, the Commissioner may require the applicant to furnish specimens or ingredients for the purpose of inspection or experiment.

(July 19, 1952, ch. 950, 66 Stat. 799.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 34, part (R.S. 4890 and 4891).
The change in language in the second paragraph broadens the requirement for specimens.

§ 115. Oath of applicant

The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when, made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of a diplomatic or consular officer of the United States, and such oath shall be valid if it complies with the laws of the state or country where made. When the application is made as provided in this title by a person other than the inventor, the oath may be so varied in form that it can be made by him.

(July 19, 1952, ch. 950, 66 Stat. 799.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 35 (R.S. 4892, amended (1) Mar. 3, 1903, ch. 1019, § 2, 32 Stat. 1225, 1226, (2) May 23, 1930, ch. 312, § 3, 46 Stat. 376).
The expression at the end of the second sentence is added to avoid application of the District of Columbia law to oaths taken outside the District.
Changes in language are made.

CROSS REFERENCES

Consular officers authorized to administer oaths, see sections 1195 and 1203 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 371 of this title.

§ 116. Joint inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each sign the application and make the required oath, except as otherwise provided in this title.

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Commissioner, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.

Whenever a person is joined in an application for patent as joint inventor through error, or a joint inventor is not included in an application through error, and such error arose without any deceptive intention on his part, the Commissioner may permit the application to be amended accordingly, under such terms as he prescribes.

(July 19, 1952, ch. 950, 66 Stat. 799.)

HISTORICAL AND REVISION NOTES

The first paragraph is implied in the present statutes, and the part of the last paragraph relating to omission of an erroneously joined inventor is in the Patent Office rules. The remainder is new and provides for the correction of a mistake in erroneously joining a person as inventor, and for filing an application when one of several joint inventors cannot be found. This section is ancillary to section 256.

CROSS REFERENCES

Joint owners, see section 262 of this title.

§ 117. Death or incapacity of inventor

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

(July 19, 1952, ch. 950, 66 Stat. 799.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 46 (R.S. 4896, amended (1) Feb. 28, 1899, ch. 227, 30 Stat. 915, (2) Mar. 3, 1903, ch. 1019, § 3, 32 Stat. 1225, 1226, (3) May 23, 1908, ch. 188, 35 Stat. 245).
The language has been considerably simplified.

CROSS REFERENCES

Fees for application for original or reissue of patent, see section 41 of this title.

§ 118. Filing by other than inventor

Whenever an inventor refuses to execute an application for patent, or cannot be found or

reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; and the Commissioner may grant a patent to such inventor upon such notice to him as the Commissioner deems sufficient, and on compliance with such regulations as he prescribes.

(July 19, 1952, ch. 950, 66 Stat. 799.)

HISTORICAL AND REVISION NOTES

This section is new and provides for the filing of an application by another on behalf of the inventor in certain special hardship situations.

§ 119. Benefit of earlier filing date in foreign country; right of priority

An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.

No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification and drawings upon which it is based are filed in the Patent and Trademark Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country. Such certification shall be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.

(July 19, 1952, ch. 950, 66 Stat. 800; Oct. 3, 1961, Pub. L. 87-333, § 1, 75 Stat. 748; July 28, 1972, Pub. L. 92-358, § 1, 86 Stat. 501; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 32, second paragraph (R.S. 4887, second paragraph, amended (1) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The first paragraph is the same as the present law with changes in language. The references to designs have been removed for inclusion in another section and the opening clause has been modified to accord with actual practice and the requirements of the International Convention for the Protection of Industrial Property.

The second paragraph is new, making an additional procedural requirement for obtaining the right of priority. Copies of the foreign papers on which the right of priority is based are required so that the record of the United States patent will be complete in this country.

REFERENCES IN TEXT

The Stockholm Revision of the Paris Convention, referred to in text, means the Convention revising the Convention of the Union of Paris of Mar. 20, 1883, as revised, for the protection of industrial property, done at Stockholm July 14, 1967, entered into force for the United States Sept. 5, 1970, with the exception of Articles 1 through 12 which entered into force for the United States Aug. 25, 1973. See 21 UST 1583; 24 UST 2140; TIAS 6293, 7727.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1972—Pub. L. 92-358 added last paragraph providing that under certain circumstances, applications for inventors' certificate filed in a foreign country would be given the same priority as applications for patents, if the applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of filing.

1961—Pub. L. 87-333 authorized the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a) of Pub. L. 92-358 provided that: "Section 1 of this Act [which amended this section] shall take effect on the date when Articles 1-12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply only to applications thereafter filed in the United States."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-333 effective on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, Oct. 31, 1958, comes into force with respect to the United States [Jan. 4, 1962] and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing, see section 3 of Pub. L. 87-333, set out as an Effective Date of 1961 Amendment note under section 1126 of Title 15, Commerce and Trade.

JAPANESE AND CERTAIN GERMAN NATIONALS; TEMPORARY EXTENSION OF PRIORITY RIGHTS

Act Aug. 23, 1954, ch. 823, 68 Stat. 764, provided that the priority rights specified in section 101 of former Title 35, Patents, which arose before Apr. 1, 1950, were extended, with respect to inventions made subsequent to Jan. 1, 1946, in favor of certain Japanese and German nationals, to a date nine months after Aug. 23, 1954, subject to conditions and limitations specified in sections 104, 110, 112, and 114 of former title 35.

CROSS REFERENCES

Application for foreign patent, see section 102 of this title.

Determination of priority of invention, see section 102 of this title.

Interferences, see section 135 of this title.

Right of priority in design patents, see section 172 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 365, 373 of this title.

§ 120. Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, by the same inventor shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(July 19, 1952, ch. 950, 66 Stat. 800; Nov. 14, 1975, Pub. L. 94-131, § 9, 89 Stat. 691.)

EFFECTIVE DATE OF 1975 AMENDMENT

For effective date of amendment of section by Pub. L. 94-131, § 9, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

HISTORICAL AND REVISION NOTES

This section represents present law not expressed in the statute, except for the added requirement that the first application must be specifically mentioned in the second.

AMENDMENTS

1975—Pub. L. 94-131 inserted ", or as provided by section 363 of this title," following "filed in the United States".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 121, 365, 373 of this title.

CROSS REFERENCES

Specification, see section 112 of this title.

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention.

(July 19, 1952, ch. 950, 66 Stat. 800; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

This section enacts as law existing practice with respect to division, at the same time introducing a number of changes. Division is made discretionary with the Commissioner. The requirements of section 120 are made applicable and neither of the resulting patents can be held invalid over the other merely because of their being divided in several patents. In some cases a divisional application may be filed by the assignee.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Specification, see section 112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 372 of this title.

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent and Trademark Office

and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.

(July 19, 1952, ch. 950, 66 Stat. 801; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

This section enacts the Patent Office rule of secrecy of applications.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.
131. Examination of application.
132. Notice of rejection; reexamination.
133. Time for prosecuting application.
134. Appeal to the Board of Appeals.
135. Interferences.

§ 131. Examination of application

The Commissioner shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent therefor.

(July 19, 1952, ch. 950, 66 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 36 (R.S. 4893).

The first part is revised in language and amplified. The phrase "and that the invention is sufficiently useful and important" is omitted as unnecessary, the requirements for patentability being stated in sections 101, 102 and 103.

CROSS REFERENCES

Issue of patent, generally, see section 151 et seq. of this title.

Patentability of invention generally, see section 100 et seq. of this title.

Proceedings in the Patent and Trademark Office, see section 21 et seq. of this title.

§ 132. Notice of rejection; reexamination

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

(July 19, 1952, ch. 950, 66 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 51 (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213).

The first paragraph of the corresponding section of existing statute is revised in language and amplified to incorporate present practice; the second paragraph of the existing statute is placed in section 135.

The last sentence relating to new matter is added but represents no departure from present practice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

§ 133. Time for prosecuting application

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

(July 19, 1952, ch. 950, 66 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

The opening clause of the corresponding section of existing statute is omitted as having no present day meaning or value and the last two sentences are omitted for inclusion in section 267. The notice is stated as given or mailed. Language is revised.

CROSS REFERENCES

Abandonment of invention as denying patentability, see section 102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 267 of this title.

§ 134. Appeal to the Board of Appeals

An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Appeals, having once paid the fee for such appeal.

(July 19, 1952, ch. 950, 66 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 57 (R.S. 4909 amended (1) Mar. 2, 1927, ch. 273, § 5, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 2, 53 Stat. 1212).

Reference to reissues is omitted in view of the general provision in section 251. Minor changes in language are made.

CROSS REFERENCES

Appeals to Commissioner from decisions of examiners on applications for registration of trade-marks, see section 1070 of Title 15, Commerce and Trade.

Board of Appeals, composition and duties, see section 7 of this title.

§ 135. Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or appli-

cant and patentee, as the case may be. The question of priority of invention shall be determined by a board of patent interferences (consisting of three examiners of interferences) whose decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved from the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent and Trademark Office.

(b) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Commissioner may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Commissioner shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Commissioner gives such notice at a later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

Any discretionary action of the Commissioner under this subsection shall be reviewable under section 10 of the Administrative Procedure Act.

(July 19, 1952, ch. 950, 66 Stat. 801; Oct. 15, 1962, Pub. L. 87-831, 76 Stat. 958; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

The first paragraph is based on Title 35, U.S.C., 1946 ed., § 52 (R.S. 4904 amended (1) Mar. 2, 1927, ch. 273, § 4, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 1, 53 Stat. 1212).

The first paragraph states the existing corresponding statute with a few changes in language. An explicit statement that the Office decision on priority constitutes a final refusal by the Office of the claims involved, is added. The last sentence is new and provides that judgment adverse to a patentee constitutes cancellation of the claims of the patent involved after the judgment has become final, the patentee has a right of appeal (sec. 141) and is given a right of review by civil action (sec. 146).

The second paragraph is based on Title 35, U.S.C., 1946 ed., § 51, (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213). Changes in language are made.

REFERENCES IN TEXT

Section 10 of the Administrative Procedure Act, referred to in subsec. (c), is section 10 of act June 11, 1946, ch. 324, 60 Stat. 243, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 7 (§ 701 et seq.) of Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (c). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-831 designated the first and second paragraphs as subsecs. (a) and (b), and added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Decision of board of patent interferences—
Appeal to the United States Court of Customs and Patent Appeals, see section 141 of this title.
Civil action, see section 146 of this title.
Jurisdiction of United States Court of Customs and Patent Appeals, see section 1542 of Title 28, Judiciary and Judicial Procedure.
Equitable relief against interfering patents, see section 291 of this title.

CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

Sec.
141. Appeal to Court of Customs and Patent Appeals.
142. Notice of appeal.
143. Proceedings on appeal.
144. Decision on appeal.
145. Civil action to obtain patent.
146. Civil action in case of interference.

AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in chapter heading.

§ 141. Appeal to Court of Customs and Patent Appeals

An applicant dissatisfied with the decision of the Board of Appeals may appeal to the United States Court of Customs and Patent Appeals, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority may appeal to the United States Court of Customs and Patent Appeals, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section

142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.

(July 19, 1952, ch. 950, 66 Stat. 802.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 59a (R.S. 4911, amended (1) Mar. 2, 1927, ch. 273, § 8, 44 Stat. 1336, (2) Mar. 2, 1929, ch. 488, § 2a, 45 Stat. 1476, (3) Aug. 5, 1939, ch. 451, § 3, 53 Stat. 1212).

Changes in language are made.

CROSS REFERENCES

Court of Customs and Patent Appeals—
Generally, see sections 211 to 216 of Title 28, Judiciary and Judicial Procedure.
Jurisdiction of Patent and Trademark Office decisions, see section 1542 of Title 28.
Reasons of appeal—
Commissioner to furnish grounds of his decision touching points raised by, see section 143 of this title.
Decision on appeal as confined to points set forth in, see section 144 of this title.
Time for filing with Patent and Trademark Office, see section 142 of this title.

RULES OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Fee for filing and docketing patent appeals, see rule 5, Appendix to this title.
Petition of appeal, see rule 25, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 146 of this title.

§ 142. Notice of appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner and shall file in the Patent and Trademark Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

(July 19, 1952, ch. 950, 66 Stat. 802; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 60 (R.S. 4912, amended (1) Mar. 2, 1927, ch. 273, § 9, 44 Stat. 1336, (2) Mar. 2, 1929, ch. 488, § 2(b), 45 Stat. 1476).

Changes in language are made.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 141 of this title.

§ 143. Proceedings on appeal

The United States Court of Customs and Patent Appeals shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent and Trademark Office, in writing, touching all the points involved by the reasons of appeal.

(July 19, 1952, ch. 950, 66 Stat. 802; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 61 (R.S. 4913, amended Mar. 2, 1927, ch. 273, § 10, 44 Stat. 1336).

Language is changed. The requirement that the Commissioner notify the parties is omitted and a requirement that the court notify the parties is added. The statement relating to filing the papers and testimony is made more explicit.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 144. Decision on appeal

The United States Court of Customs and Patent Appeals, on petition, shall hear and determine such appeal on the evidence produced before the Patent and Trademark Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent and Trademark Office and govern the further proceedings in the case.

(July 19, 1952, ch. 950, 66 Stat. 802; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 62 (R.S. 4914).

Language is changed and the last sentence of the corresponding section of existing statute omitted as superfluous; such a sentence does not appear in the present civil action section, 35 U.S.C. 63 and in either case the validity of the patent may be questioned.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Colum-

bia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

(July 19, 1952, ch. 950, 66 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 63 (R.S. 4915, amended (1) Mar. 2, 1927, ch. 273, § 11, 44 Stat. 1336, (2) Mar. 2, 1929, ch. 488, § 2(b), 45 Stat. 1476, (3) Aug. 5, 1939, ch. 451, § 4, 53 Stat. 1212).

Bill in equity is changed to civil action and the section is restricted to exclude interferences which are covered by the next section. The time for filing the action is changed to the same as the time for appeal. The requirement for the applicant to file a copy of the decision in the Patent Office is omitted.

Language is changed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 141 of this title.

§ 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Customs and Patent Appeals, and such appeal is pending or has been decided. In such suits the record in the satent and Trademark Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent and Trademark Office of a certified copy of the judgment and on compliance with the requirements of law.

(July 19, 1952, ch. 950, 66 Stat. 803; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

The first paragraph and parts of the second paragraph are based on Title 35, U.S.C., 1946 ed., § 63 (R.S. 4915, amended (1) Mar. 2, 1927, ch. 273, § 11, 44 Stat. 1336, (2) Mar. 2, 1929, ch. 488, § 2, (b), 45 Stat. 1476, (3) Aug. 5, 1939, ch. 451, § 4, 53 Stat. 1212), limited to interferences and making some changes. The action is not restricted to applicants, but a patentee may also bring the action. The time for bringing the action is made the same as for appeals.

In the second paragraph the first sentence is new and eliminates difficulties arising from unrecorded interests.

The second sentence is based on Title 35, U.S.C., 1946 ed., § 72a (Mar. 3, 1927, ch. 364, 44 Stat. 1394, reenacted Oct. 31, 1951, ch. 655, § 53a, 65 Stat. 728) with changes in language.

The fourth sentence is new and prevents such suits from being filed against the Commissioner as a defendant; however, the Commissioner has the right to intervene.

Language is changed.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in four places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Section applicable to action for adjudication of validity of interfering patents, see section 291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 141, 291 of this title.

CHAPTER 14—ISSUE OF PATENT

Sec.
151. Issue of patent.
152. Issue of patent to assignee.
153. How issued.
154. Contents and term of patent.

AMENDMENTS

1965—Pub. L. 89-83, § 6, July 24, 1965, 79 Stat. 261, substituted "Issue of patent" for "Time of issue of patent" in item 151.

§ 151. Issue of patent

If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period. In calculating the amount of a

remaining balance, charges for a page or less may be disregarded.

If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the delay in payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred.

(July 19, 1952, ch. 950, 66 Stat. 803; July 24, 1965, Pub. L. 89-83, § 4, 79 Stat. 260; Jan. 2, 1975, Pub. L. 93-601, § 3, 88 Stat. 1956.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 41 (R.S. 4885, amended (1) May 23, 1908, ch. 189, 35 Stat. 246, (2) Aug. 9, 1939, § 2, ch. 619, 53 Stat. 1293).

Language is changed.

AMENDMENTS

1975—Pub. L. 93-601 substituted "and the delay in payment is shown to have been unavoidable," for "within three months after the due date and sufficient cause is shown for the late payment," in the last paragraph.

1965—Pub. L. 89-83 substituted provisions requiring a notice of allowance to be sent to the applicant, the notice of allowance to specify a sum, constituting the issue fee or a portion thereof, which shall be paid within 3 months thereafter, the patent to issue upon payment of this sum, the application to be deemed abandoned if the sum is not paid, and any remaining balance of the fee to be paid within 3 months after issuance of the patent shall lapse, and permitting the commissioner within 3 months after the due date of an unpaid fee on a showing of sufficient cause to accept late payment as though no abandonment or lapse had occurred, for provisions which required a notice of allowance to be sent to the applicant, the final fee to be paid within 6 months after the notice, the patent to be issued within 3 months from the date of the payment, and which permitted delayed payment of the issue fee up to 1 year.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-601 effective Jan. 2, 1975, with examiners-in-chief in office on such date to continue with existing appointment, see section 4(b) of Pub. L. 93-601, set out as an Effective Date of 1975 Amendment note under section 3 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-83 effective three months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

ACCEPTANCE OF LATE PAYMENT OF ISSUE FEES BY COMMISSIONER

Section 4(a) of Pub. L. 93-601 provided that: "The Commissioner of Patents [now Patents and Trademarks] may, in accordance with Section 3 of this Act [amending this section], accept late payment of issue fees, the payment of which was governed by the provisions of Public Law 89-93 [probably should refer to Public Law 89-83, which amended sections 41, 112, and 151 of this title and section 1113 of Title 15, Commerce and Trade]; *Provided:* the term of the patent for which late payment of such an issue fee is accepted shall expire earlier than the time specified in Section 154 of Title 35, United States Code by a period equal to the delay between the time the application became abandoned or the patent lapsed for failure to pay the issue fee and the time the late payment is accepted after enactment of this Act [Jan. 2, 1975]. *Further Provided:* no patent with respect to which the issue fee was governed by the provisions of PL 89-83 and for which a late payment of the issue fee is accepted under the authority created by Section 3 of this Act, shall abridge or affect the right of any person or his successors in business who made, purchased or used anything covered by the patent, after the date of the application became abandoned or patent lapsed for failure to pay the issue fee but prior to the grant or restoration of the patent, to continue the use of or to sell to others to be used or sold, the specific thing so made, purchased, or used. A court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the date the application became abandoned or patent lapsed for failure to pay the fee but prior to the grant or restoration of the patent, and it may also provide for the continued practice of any process covered by the patent, practiced, or for the practice of which substantial preparation was made, after the date the application became abandoned or patent lapsed for failure to pay the issue fee but prior to the grant or restoration of the patent, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant or restoration of the patent."

CROSS REFERENCES

Patent fees, see section 41 of this title.
Payment of fees, see section 42 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 267 of this title.

§ 152. Issue of patent to assignee

Patents may be granted to the assignee of the inventor of record in the Patent and Trademark Office, upon the application made and the specification sworn to by the inventor, except as otherwise provided in this title.

(July 19, 1952, ch. 950, 66 Stat. 804; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 44 (R.S. 4895).

Language is changed and the reference to reissue is omitted in view of the general provision in section 251.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Application for patent by assignee, see section 118 of this title.

Ownership of patent, assignment of, see section 261 of this title.

Reissue of patent by assignee, see section 261 of this title.

§ 153. How issued

Patents shall be issued in the name of the United States of America, under the seal on the Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon and attested by an officer of the Patent and Trademark Office designated by the Commissioner, and shall be recorded in the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 804; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 39 (R.S. 4883, amended (1) Feb. 18, 1888, ch. 15, 25 Stat. 40, (2) April 11, 1903, ch. 417, 32 Stat. 95, (3) Feb. 18, 1922, ch. 58, § 5, 42 Stat. 391).

The phrases referring to the attesting officers and to the recording of the patents are broadened.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in three places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Seal, see section 2 of this title.

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of issue fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

(July 19, 1952, ch. 950, 66 Stat. 804; July 24, 1965, Pub. L. 89-83, § 5, 79 Stat. 261.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 40 (R.S. 4884, amended May 23, 1930, ch. 312, § 1, 46 Stat. 376).

The reference to plants is omitted for inclusion in another section and the reference to the title is shortened since the title is of no legal significance.

The wording of the granting clause is changed to "the right to exclude others from making, using, or selling", following language used by the Supreme Court, to render the meaning clearer.

"United States" is defined in section 100.

AMENDMENTS

1965—Pub. L. 89-83 added "subject to the payment of issue fees as provided for in this title".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-83 effective three months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

CROSS REFERENCES

Design patent, term of, see section 173 of this title.
Plant patents, grant of, see section 163 of this title.

CHAPTER 15—PLANT PATENTS

Sec.
161. Patents for plants.
162. Description, claim.
163. Grant.
164. Assistance of Department of Agriculture.

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

(June 19, 1952, ch. 950, 66 Stat. 804; Sept. 3, 1954, ch. 1259, 68 Stat. 1190.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31, part (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The provision relating to plants in the corresponding section of existing statute is made a separate section.

AMENDMENTS

1954—Act. Sept. 3, 1954, provided that plant seedlings, discovered, propagated asexually, and proved to have new characteristics distinct from other known plants are patentable.

CROSS REFERENCES

Patentability of inventions generally, see section 100 et seq. of this title.
Plant Variety Protection, see section 2321 et seq. of Title 7, Agriculture.

§ 162. Description, claim

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

(July 19, 1952, ch. 950, 66 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33, part (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958, (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The first paragraph is the provision in R.S. 4888 (see section 112). The second paragraph is not in the statute but represents the actual practice.

§ 163. Grant

In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.

(July 19, 1952, ch. 950, 66 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 40, part (R.S. 4884, amended May 23, 1930, ch. 312, § 1, 46 Stat. 376).

This provision is from R.S. 4884 (see section 154) amended in language.

CROSS REFERENCES

Patent as grant of right to exclude others from making, using, or selling the invention throughout the United States, see section 154 of this title.

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Commissioner, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department re-

search upon special problems, or (3) to detail to the Commissioner officers and employees of the Department.

(July 19, 1952, ch. 950, 66 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 56a (May 23, 1930, ch. 312, § 4, 46 Stat. 376).

Language is changed.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Agriculture, with certain exceptions, to the Secretary of Agriculture, with power to delegate, see Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Agricultural research on plants, see section 427 of Title 7, Agriculture.

Plant Variety Protection, see chapter 57 of Title 7.

CHAPTER 16—DESIGNS

Sec.
171. Patents for designs.
172. Right of priority.
173. Term of design patent.

§ 171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212; R.S. 4933).

The list of conditions specified in the corresponding section of existing statute is omitted as unnecessary in view of the general inclusion of all conditions applying to other patents. Language is changed.

CROSS REFERENCES

Additional remedy for infringement of design patent, see section 289 of this title.

Patentability of inventions generally, see section 100 et seq. of this title.

Unauthorized use of patented designs, see section 289 of this title.

§ 172. Right of priority

The right of priority provided for by section 119 of this title and the time specified in section 102(d) shall be six months in the case of designs.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 32, part (R.S. 4887, amended (1) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

This provision is taken from R.S. 4887 (see section 119) and made a separate section.

§ 173. Term of design patent

Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 77 (R.S. 4931).

Language is changed slightly.

CROSS REFERENCES

Term of patent, see section 154 of this title.

CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

Sec.
181. Secrecy of certain inventions and withholding of patent.
182. Abandonment of invention for unauthorized disclosure.
183. Right of compensation.[1]
184. Filing of application in foreign country.
185. Patent barred for filing without license.
186. Penalty.
187. Nonapplicability to certain persons.
188. Rules and regulations, delegation of power.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 368 of this title; title 42 sections 2457, 5908.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national in-

[1] So in original. Does not conform to section catchline.

terest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 151 (Feb. 1, 1952, ch. 4, § 1, 66 Stat. 3, 4).
Language is changed.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

DEFENSE AGENCIES

The Department of Justice was designated as a defense agency of the United States for the purposes of this chapter by Executive Order No. 10457, May 27, 1953, 18 F.R. 3083.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 184, 186 of this title.

§ 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner shall not be given without the concurrence of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

(July 19, 1952, ch. 950, 66 Stat. 806.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 152 (Feb. 1, 1952, ch. 4, § 2, 66 Stat. 4).
Language is changed.

§ 183. Right to compensation

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the Court of Claims or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the Court of Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action

under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based.

(July 19, 1952, ch. 950, 66 Stat. 806.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 153 (Feb. 1, 1952, ch. 4, § 3, 66 Stat. 4, 5).
Language is changed.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been inadvertently filed abroad and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

(July 19, 1952, ch. 950, 66 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 154 (Feb. 1, 1952, ch. 4, § 4, 66 Stat. 5).
Language is changed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 185, 186 of this title.

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid.

(July 19, 1952, ch. 950, 66 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 155 (Feb. 1, 1952, ch. 4, § 5, 66 Stat. 5).
Language is changed.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.

(July 19, 1952, ch. 950, 66 Stat. 807.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 156 (Feb. 1, 1952, ch. 4, § 6, 66 Stat. 5, 6).
Language is changed.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 157 (Feb. 1, 1952, ch. 4, § 7, 66 Stat. 6).
Language is changed.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 158 (Feb. 1, 1952, ch. 4, § 8, 66 Stat. 6).
Language is changed.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

DEFENSE AGENCIES

The Department of Justice was designated as a defense agency of the United States for the purposes of this chapter by Executive Order No. 10457, May 27, 1953, 18 F.R. 3083.

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS

Chap.		Sec.
25.	Amendment and Correction of Patents	251
26.	Ownership and Assignment	261
27.	Government Interests in Patents	266
28.	Infringement of Patents	271
29.	Remedies for Infringement of Patent and Other Actions	281

CHAPTER 25—AMENDMENT AND CORRECTION OF PATENTS

Sec.
251. Reissue of defective patents.
252. Effect of reissue.
253. Disclaimer.
254. Certificate of correction of Patent and Trademark Office mistake.
255. Certificate of correction of applicant's mistake.
256. Misjoinder of inventor.

Amendments

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in item 254.

§ 251. Reissue of defective patents

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

(July 19, 1952, ch. 950, 66 Stat. 808.)

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 64 (R.S. 4916, amended May 24, 1928, ch. 730, 45 Stat. 732.)

The sentences of the corresponding section of existing statute are rearranged and divided into two sections with some changes in language. The clause at the end of the present statute is omitted as obsolete.

The third paragraph incorporates by reference the requirements of other applications, and adds a new provision relating to application for reissue being made in certain cases by the assignee.

A two year period of limitation on applying for broadened reissues is added, codifying the present rule of decision with a fixed period.

Cross References

Application for patent, see section 111 of this title.

Fee for application for reissue of patent, see section 41 of this title.

Section Referred to in Other Sections

This section is referred to in section 282 of this title.

§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practice, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

(July 19, 1952, ch. 950, 66 Stat. 808.)

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 64 (R.S. 4916, amended May 24, 1928, ch. 730, 45 Stat. 732.)

The first paragraph follows the present section with some rearrangement in language. The second paragraph adds new provisions for the protection of intervening rights, the court is given discretion to protect legitimate activities which would be adversely affected by the grant of a reissue and things made before the grant of the reissue are not subject to the reissue unless a claim of the original patent which is repeated in the reissue is infringed.

§ 253. Disclaimer

Whenever, without any deceptive intention, a claim of a patent is invalid the remaining claims shall not thereby be rendered invalid. A patentee, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of any complete claim, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, and recorded in the Patent and Trademark Office; and it shall thereafter be considered as

part of the original patent to the extent of the interest possessed by the disclaimant and by those claiming under him.

In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

(July 19, 1952, ch. 950, 66 Stat. 809; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 65 (R.S. 4917).

Language is changed and substantive changes are introduced; (1) only a claim as a whole may be disclaimed, and (2) the provision regarding delay is omitted. See preliminary general description of bill.

See section 288.

The second paragraph is new and provides for the disclaiming or dedication of an entire patent, or any terminal part of the term, for example, a patentee may disclaim the last three years of the term of his patent.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Costs when disclaimer not entered before suit, see section 288 of this title.

Fee for filing disclaimer, see section 41 of this title.

§ 254. Certificate of correction of Patent and Trademark Office mistake

Whenever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents. A printed copy thereof shall be attached to each printed copy of the patent, and such certificate shall be considered as part of the original patent. Every such patent, together with such certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form. The Commissioner may issue a corrected patent without charge in lieu of and with like effect as a certificate of correction.

(July 19, 1952, ch. 950, 66 Stat. 809; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 88 (Mar. 4, 1925, ch. 535, § 1, 43 Stat. 1268).

The last sentence of the present section is omitted as obsolete. A sentence is added similar to a provision in the corresponding section in the trade-mark law, 15 U.S.C., 1946 ed., § 1057(f), and provides that the Commissioner may issue a corrected patent instead of a certificate of correction.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in section catchline and in text.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

§ 255. Certificate of correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require re-examination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

(July 19, 1952, ch. 950, 66 Stat. 809; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

This section providing for the correction of minor clerical errors made by the applicant, is new and follows a similar provision in the trade-mark law, 15 U.S.C., 1946 ed., § 1057(g).

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

§ 256. Misjoinder of inventor

Whenever a patent is issued on the application of persons as joint inventors and it appears that one of such persons was not in fact a joint inventor, and that he was included as a joint inventor by error and without any deceptive intention, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate deleting the name of the erroneously joined person from the patent.

Whenever a patent is issued and it appears that a person was a joint inventor, but was omitted by error and without deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate adding his name to the patent as a joint inventor.

The misjoinder or nonjoinder of joint inventors shall not invalidate a patent, if such error can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly.

(July 19, 1952, ch. 950, 66 Stat. 810.)

HISTORICAL AND REVISION NOTES

This section is new and is companion to section 116.

The first two paragraphs provide for the correction of the inadvertent joining or nonjoining of a person as a joint inventor. The third paragraph provides that a patent shall not be invalid for such cause, and also provides that a court may order correction of a patent; the two sentences of this paragraph are independent.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

CHAPTER 26—OWNERSHIP AND ASSIGNMENT

Sec.
261. Ownership; assignment.
262. Joint owners.

§ 261. Ownership; assignment

Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

(July 19, 1952, ch. 950, 66 Stat. 810; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 47 (R.S. 4898, amended (1) Mar. 3, 1897, ch. 391, § 5, 29 Stat. 93, (2) Feb. 18, 1922, ch. 58, § 6, 42 Stat. 391, (3) Aug. 18, 1941, ch. 370, 55 Stat. 634).

The first paragraph is new but is declaratory only. The second paragraph is the same as in the corresponding section of existing statute. The third paragraph is from the existing statute, a specific reference to another statute is omitted. The fourth paragraph is the same as the existing statute but language has been changed.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Issue of patent to assignee, see section 152 of this title.

Oaths, acknowledgments, affidavits and depositions before United States Magistrates, see section 636 of Title 28, Judiciary and Judicial Procedure.

§ 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use or sell the patented invention without the consent of and without accounting to the other owners.

(July 19, 1952, ch. 950, 66 Stat. 810.)

HISTORICAL AND REVISION NOTES

This section states a condition in existing law not expressed in the existing statutes.

CHAPTER 27—GOVERNMENT INTERESTS IN PATENTS

Sec.
[266. Repealed.]
267. Time for taking action in Government applications.

AMENDMENTS

1965—Pub. L. 89-83, § 8, July 24, 1965, 79 Stat. 261, struck out item 266.

[§ 266. Repealed. Pub. L. 89-83, § 8, July 24, 1965, 79 Stat. 261]

Section, act July 19, 1952, ch. 950, § 1, 66 Stat. 811, provided for the issuance of patents to government employees without fees.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 89-83 effective three months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

EX. ORD. NO. 9424. ESTABLISHMENT OF A REGISTER OF GOVERNMENT INTERESTS IN PATENTS

Ex. Ord. No. 9424, Feb. 18, 1944, 9 F.R. 1959, provided:

1. The Secretary of Commerce shall cause to be established in the United States Patent Office [now Patent and Trademark Office] a separate register for the recording of all rights and interests of the Government in or under patents and applications for patents.

2. The several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, shall forward promptly to the Commissioner of Patents [now Patents and Trademarks] for recording in the separate register provided for in paragraph 1 hereof all licenses, assignments, or other interests of the Government in or under patents or applications for patents, in accordance with such rules and regulations as may be prescribed pursuant to paragraph 4 hereof; but the lack of recordation in such register of any right or interest of the Government in or under any patent or application therefor shall not prejudice in any way the assertion of such right or interest by the Government.

3. The register shall be open to inspection except as to such entries or documents which, in the opinion of the department or agency submitting them for recording, should be maintained in secrecy: Provided, however, That the right of inspection may be restricted to authorized representatives of the Government pending the final report to the President by the National Patent Planning Commission under Executive Order No. 8977 of December 12, 1941, and action thereon by the President.

4. The Commissioner of Patents [now Patents and Trademarks], with the approval of the Secretary of Commerce, shall prescribe such rules and regulations as he may deem necessary to effectuate the purposes of this order.

EX. ORD. NO. 9865. PATENT PROTECTION ABROAD OF INVENTIONS RESULTING FROM RESEARCH FINANCED BY THE GOVERNMENT

Ex. Ord. No. 9865, June 14, 1947, 12 F.R. 3907, as amended by Ex. Ord. No. 10096, Jan. 23, 1950, 15 F.R. 389, provided:

1. All Government departments and agencies shall, whenever practicable, acquire the right to file foreign patent applications on inventions resulting from research conducted or financed by the Government.

2. All Government departments and agencies which have or may hereafter acquire title to inventions or the right to file patent applications abroad thereon, shall fully and continuously inform the Chairman of Government Patents Board [now Secretary of Commerce. See Ex. Ord. No. 10930 set out as a note below] concerning such inventions, except as provided in section 6 hereof, and shall make recommendations to the Chairman of Government Patents Board [now Secretary of Commerce] as to which of such inventions should receive patent protection by the United States abroad and the foreign jurisdictions in which such patent protection should be sought. The recommendations of such departments and agencies shall indicate the immediate or future industrial, commercial or other value of the invention concerned, including its value to public health.

3. The Chairman of Government Patents Board [now Secretary of Commerce] shall determine whether, and in what foreign jurisdictions, the United States should seek patents for such inventions, and, to the extent of appropriations available therefor, shall procure patent protection for such inventions, taking all action, consistent with existing law, necessary to acquire and maintain patent rights abroad. Such determinations of the said Department shall be made after full consultation with United States industry and commerce, with the Department of State, and with other Government agencies familiar with the technical, scientific, industrial, commercial or other economic or social factors affecting the invention involved, and after consideration of the availability of valid patent protection in the countries determined to be immediate or potential markets for, or producers of, products, processes, or services covered by or relating to the invention.

4. The Chairman of Government Patents Board [now Secretary of Commerce] shall administer foreign patents acquired by the United States under the terms of this order and shall issue licenses thereunder in accordance with law under such rules and regulations as he shall prescribe. Nationals of the United States shall be granted licenses on a nonexclusive royalty free basis except in such cases as he shall determine and proclaim it to be inconsistent with the public interest to issue such licenses on a nonexclusive royalty free basis.

5. The Department of State, in consultation with the Chairman of Government Patents Board [now Secretary of Commerce], shall negotiate arrangements among governments under which each government and its nationals shall have access to the foreign patents of the other participating governments. Patents relating to matters of public health may be licensed by the Chairman of Government Patents Board [now Secretary of Commerce], with the approval of the Secretary of State, to any country or its nationals upon such terms and conditions as are in accordance with law and as the Chairman of Government Patents Board [now Secretary of Commerce] determines to be appropriate, regardless of whether such country is a party to the arrangements provided for in this section.

6. There shall be exempted from the provisions of this order (a) all inventions within the jurisdiction of the Atomic Energy Commission except in such cases as the said Commission specifically authorizes the inclusion of an invention under the terms of this order; and (b) all other inventions officially classified as secret or confidential for reasons of the national security. Nothing in this order shall supersede the declassification policies and procedures established by Executive Orders Nos. 9568 of June 8, 1945, 9604 of August 25, 1945 [both set out as notes under section 1651 of Appendix to Title 50, War and National Defense], and 9809 of December 12, 1946 [set out as a note under section 601 of Appendix to Title 50].

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 10096. UNIFORM GOVERNMENT PATENT POLICY FOR INVENTIONS BY GOVERNMENT EMPLOYEES

Ex. Ord. No. 10096, Jan. 23, 1950, 15 F.R. 389, as amended by Ex. Ord. No. 10695, Jan. 16, 1957, 22 F.R. 365; Ex. Ord. No. 10930, Mar. 24, 1961, 26 F.R. 2583, provided:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the armed forces of the United States, in the interest of the establishment and operation of a uniform patent policy for the Government with respect to inventions made by Government employees, it is hereby ordered as follows:

1. The following basic policy is established for all Government agencies with respect to inventions hereafter made by any Government employee:

(a) The Government shall obtain the entire right, title, and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) last above, to the invention, is insufficient equitably to justify a requirement of assignment to the Government of the entire right, title and interest to such invention, or in any case where the Government has insufficient interest in an invention to obtain entire right, title and interest therein (although the Government could obtain some under paragraph (a), above), the Government agency concerned, subject to the approval of the Chairman of the Government Patents Board [now Secretary of Commerce. See Ex. Ord. No. 10930 set out as a rate below] (provided for in paragraph 3 of this order and hereinafter referred to as the Chairman), shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms thereof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b), above, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (i) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (ii) to conduct or perform research, development work, or both, (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a

liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, or made by an employee included within any other category of employees specified by regulations issued pursuant to section 4(b) hereof, falls within the provisions of paragraph (a), above, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b), above. Either presumption may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made and, notwithstanding the foregoing, shall not preclude a determination that the invention falls within the provisions of paragraph (d) next below.

(d) In any case wherein the Government neither (1) pursuant to the provisions of paragraph (a) above, obtains entire right, title and interest in and to an invention nor (2) pursuant to the provisions of paragraph (b) above, reserves a non-exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

(e) Actions taken, and rights acquired, under the foregoing provisions of this section, shall be reported to the Chairman [now Secretary of Commerce] in accordance with procedures established by him.

2. Subject to considerations of national security, or public health, safety, or welfare, the following basic policy is established for the collection, and dissemination to the public, of information concerning inventions resulting from Government research and development activities:

(a) When an invention is made under circumstances defined in paragraph 1(a) of this order giving the United States the right to title thereto, the Government agency concerned shall either prepare and file an application for patent therefor in the United States Patent Office [now Patent and Trademark Office] or make a full disclosure of the invention promptly to the Chairman [now Secretary of Commerce], who may, if he determines the Government interest so requires, cause application for patent to be filed or cause the invention to be fully disclosed by publication thereof: *Provided, however,* That, consistent with present practice of the Department of Agriculture, no application for patent shall, without the approval of the Secretary of Agriculture, be filed in respect of any variety of plant invented by any employee of that Department.

(b) [Revoked. Ex. Ord. No. 10695, Jan. 16, 1957, 22 F.R. 365]

3. (a) [Revoked. Ex. Ord. No. 10930, Mar. 24, 1961, 26 F.R. 2583]

(b) The Government Patents Board shall advise and confer with the Chairman concerning the operation of those aspects of the Government's patent policy which are affected by the provisions of this order or of Executive Order No. 9865, and suggest modifications or improvements where necessary.

(c) [Revoked. Ex. Ord. No. 10930, Mar. 24, 1961, 26 F.R. 2583]

(d) The Chairman shall establish such committees and other working groups as may be required to advise or assist him in the performance of any of his functions.

(e) The Chairman of the Government Patents Board [now Secretary of Commerce] and the Chairman of the Interdepartmental Committee on Scientific Research and Development (provided for by Executive Order No. 9912 of December 24, 1947), shall establish and maintain such mutual consultation as will effect the proper coordination of affairs of common concern.

4. With a view to obtaining uniform application of the policies set out in this order and uniform operations thereunder, the Chairman [now Secretary of Commerce] is authorized and directed:

(a) To consult and advise with Government agencies concerning the application and operation of the policies outlined herein;

(b) After consultation with the Government Patents Board, to formulate and submit to the President for approval such proposed rules and regulations as may be necessary or desirable to implement and effectuate the aforesaid policies, together with the recommendations of the Government Patents Board thereon;

(c) To submit annually a report to the President concerning the operation of such policies, and from time to time such recommendations for modification thereof as may be deemed desirable;

(d) To determine with finality any controversies or disputes between any Government agency and its employees, to the extent submitted by any party to the dispute, concerning the ownership of inventions made by such employees or rights therein; and

(e) To perform such other or further functions or duties as may from time to time be prescribed by the President or by statute.

5. The functions and duties of the Secretary of Commerce and the Department of Commerce under the provisions of Executive Order No. 9865 of June 14, 1947 are hereby transferred to the Chairman and the whole or any part of such functions and duties may be delegated by him to any Government agency or officer: *Provided,* that said Executive Order No. 9865 shall not be deemed to be amended or affected by any provision of this Executive order other than this paragraph 5.

6. Each Government agency shall take all steps appropriate to effectuate this order, including the promulgation of necessary regulations which shall not be inconsistent with this order or with regulations issued pursuant to paragraph 4(b) hereof.

7. As used in this Executive order, the next stated terms, in singular and plural, are defined as follows for the purposes hereof;

(a) "Government agency" includes any executive department and any independent commission, board, office, agency, authority, or other establishment of the Executive Branch of the Government of the United States (including any such independent regulatory commission or board, any such wholly-owned corporation, and the Smithsonian Institution), but excludes the Atomic Energy Commission.

(b) "Government employee" includes any officer or employee, civilian or military, of any Government agency, except such part-time consultants or employees as may be excluded by regulations promulgated pursuant to paragraph 4(b) hereof.

(c) "Invention" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

Ex. Ord. No. 10695. Transfer of Records to Department of Commerce

Section 2 of Ex. Ord. 10695, Jan. 16, 1957, 22 F.R. 365, provided that "The Chairman of the Government Patents Board is hereby authorized to transfer to the Department of Commerce any or all of the records heretofore prepared by the Board pursuant to paragraph 2(b) of Executive Order No. 10096."

Ex. Ord. No. 10930. Abolition of Government Patents Board

Ex. Ord. No. 10930, Mar. 24, 1961, 26 F.R. 2583, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

Section 1. The Government Patents Board, established by section 3(a) of Executive Order No. 10096 of January 23, 1950 [set out above], and all positions established thereunder or pursuant thereto are hereby abolished.

Sec. 2. All functions of the Government Patents Board and of the Chairman thereof under the said Executive Order No. 10096, except the functions of conference and consultation between the Board and the Chairman, are hereby transferred to the Secretary of Commerce, who may provide for the performance of

such transferred functions by such officer, employee, or agency of the Department of Commerce as he may designate.

SEC. 3. The Secretary of Commerce shall make such provision as may be necessary and consonant with law for the disposition or transfer of property, personnel, records, and funds of the Government Patents Board.

SEC. 4. Except to the extent that they may be inconsistent with this order, all determinations, regulations, rules, rulings, orders, and other actions made or issued by the Governments Patents Board, or by any Government agency with respect to any function transferred by this order, shall continue in full force and effect until amended, modified, or revoked by appropriate authority.

SEC. 5. Subsections (a) and (c) of section 3 of Executive Order No. 10096 are hereby revoked, and all other provisions of that order are hereby amended to the extent that they are inconsistent with the provisions of this order.

JOHN F. KENNEDY.

CROSS REFERENCES

Assignment of application for patent by officers and employees of National Science Foundation, see section 1871 of Title 42, The Public Health and Welfare.

Restrictions on officers and employees of Patent and Trademark Office as to interest in patents, see section 4 of this title.

§ 267. Time for taking action in Government applications

Notwithstanding the provisions of sections 133 and 151 of this title, the Commissioner may extend the time for taking any action to three years, when an application has become the property of the United States and the head of the appropriate department or agency of the Government has certified to the Commissioner that the invention disclosed therein is important to the armament or defense of the United States.

(July 19, 1952, ch. 950, 66 Stat. 811.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347–8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

This provision, which appears as the last two sentences of the corresponding section of the present statute (see note to section 133) is made a separate section and rewritten in simpler form.

CHAPTER 28—INFRINGEMENT OF PATENTS

Sec.
271. Infringement of patent.
272. Temporary presence in the United States.

§ 271. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement.

(July 19, 1952, ch. 950, 66 Stat. 811.)

HISTORICAL AND REVISION NOTES

The first paragraph of this section is declaratory only, defining infringement.

Paragraphs (b) and (c) define and limit contributory infringement of a patent and paragraph (d) is ancillary to these paragraphs, see preliminary general description of bill. One who actively induces infringement as by aiding and abetting the same is liable as an infringer, and so is one who sells a component part of a patented invention or material or apparatus for use therein knowing the same to be especially made or especially adapted for use in the infringement of the patent except in the case of a staple article or commodity of commerce having other uses. A patentee is not deemed to have misused his patent solely by reason of doing anything authorized by the section.

CROSS REFERENCES

Action for infringement of patent, see section 281 of this title.

Action for infringement of patent containing invalid claim, see section 288 of this title.

Additional remedy for infringement of design patent, see section 289 of this title.

Damages for infringement of patent, see section 284 of this title.

§ 272. Temporary presence in the United States

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States.

(July 19, 1952, ch. 950, 66 Stat. 812.)

HISTORICAL AND REVISION NOTES

This section follows the requirement of the International Convention for the Protection of Industrial Property, to which the United States is a party, and also codifies the holding of the Supreme Court that use of a patented invention on board a foreign ship does not infringe a patent.

CHAPTER 29—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

Sec.
281. Remedy for infringement of patent.
282. Presumption of validity; defenses.
283. Injunction.
284. Damages.
285. Attorney fees.

Sec.
286. Time limitation on damages.
287. Limitation on damages; marking and notice.
288. Action for infringement of a patent containing an invalid claim.
289. Additional remedy for infringement of design patent.
290. Notice of patent suits.
291. Interfering patents.
292. False marking.
293. Nonresident patentee; service and notice.

§ 281. Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.

(July 19, 1952, ch. 950, 66 Stat. 812.)

Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., §§ 67 and 70, part (R.S. 4919; R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

The corresponding two sections of existing law are divided among sections 281, 283, 284, 285, 286 and 289 with some changes in language. Section 281 serves as an introduction or preamble to the following sections, the modern term civil action is used, there would be, of course, a right to a jury trial when no injunction is sought.

Cross References

Action against United States in Court of Claims for use and manufacture of invention, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction—

Courts of appeals from judgments in civil actions for infringement, final except for accounting, see section 1292 of Title 28.

District courts as having original and exclusive jurisdiction of civil actions arising under any Act of Congress relating to patents, see section 1338 of Title 28.

Power of court to grant injunctions, see section 283 of this title.

Service of process in infringement action, see section 1694 of Title 28, Judiciary and Judicial Procedure.

Venue of actions for infringement, see section 1400 of Title 28.

§ 282. Presumption of validity; defenses

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

(1) Noninfringement, absence of liability for infringement or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this title,

(4) Any other fact or act made a defense by this title.

In actions involving the validity or infringement of a patent the party asserting invalidity or noninfringement shall give notice in the pleadings or otherwise in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires.

(July 19, 1952, ch. 950, 66 Stat. 812; July 24, 1965, Pub. L. 89-83, § 10, 79 Stat. 261; Nov. 14, 1975, Pub. L. 94-131, § 10, 89 Stat. 692.)

Effective Date of 1975 Amendment

For effective date of amendment of first par. by Pub. L. 94-131, § 10, Nov. 14, 1975, 89 Stat. 692, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Historical and Revision Notes

Derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391, § 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The first paragraph declares the existing presumption of validity of patents.

The five defenses named in R.S. 4920 are omitted and replaced by a broader paragraph specifying defenses in general terms.

The third paragraph, relating to notice of prior patents, publications and uses, is based on part of the last paragraph of R.S. 4920 which was superseded by the Federal Rules of Civil Procedure but which is reinstated with modifications.

Amendments

1975—First par. Pub. L. 94-131 made presumption of validity applicable to claim of a patent in multiple dependent form and multiple dependent claims and substituted "asserting such invalidity" for "asserting it".

1965—Pub. L. 89-83 required each claim of a patent (whether in independent or dependent form) to be presumed valid independently of the validity of other claims and required dependent claims to be presumed valid even though dependent upon an invalid claim.

Effective Date of 1965 Amendment

Amendment by Pub. L. 89-83 effective 3 months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

Cross References

Patentability, prior knowledge or use, public use or sale, and abandonment, see section 102 of this title.

Time limitation on damages, see section 286 of this title.

§ 283. Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

(July 19, 1952, ch. 950, 66 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This section is the same as the provision which opens R.S. 4921 with minor changes in language.

CROSS REFERENCES

District courts of the United States as having original and exclusive jurisdiction of civil actions arising under any Act of Congress relating to patents, see section 1338 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 284. Damages

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on title 35, U.S.C., 1946 ed., §§ 67 and 70, part (R.S. 4919; R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This section consolidates the provisions relating to damages in R.S. 4919 and 4921, with some changes in language.

§ 285. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This section is substantially the same as the corresponding provision in R.S. 4921; "in exceptional cases" has been added as expressing the intention of the present statute as shown by its legislative history and as interpreted by the courts.

§ 286. Time limitation on damages

Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.

In the case of claims against the United States Government for use of a patented invention, the period before bringing suit, up to six years, between the date of receipt of a written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

The first paragraph is the same as the provision in R.S. 4921 with minor changes in language, with the added provision relating to the date for counterclaims for infringement.

The second paragraph is new and relates to extending the period of limitations with respect to suits in the Court of Claims in certain instances when administrative consideration is pending.

§ 287. Limitation on damages; marking and notice

Patentees, and persons making or selling any patented article for or under them, may give notice to the public that the same is patented, either by fixing thereon the word "patent" or the abbreviation "pat.", together with the number of the patent, or when, from the character of the article, this can not be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice. In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 49 (R.S. 4900, amended Feb. 7, 1927, ch. 67, 44 Stat. 1058).

Language is changed. The proviso in the corresponding section of existing statute is omitted as being temporary in character and now obsolete.

§ 288. Action for infringement of a patent containing an invalid claim

Whenever, without deceptive intention, a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent and Trademark Office before the commencement of the suit.

(July 19, 1952, ch. 950, 66 Stat. 813; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 71 (R.S. 4922).

The necessity for a disclaimer to recover on valid claims is eliminated. See section 253.

Language is changed.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Right to disclaim and requisites and effect of disclaimer, see section 253 of this title.

§ 289. Additional remedy for infringement of design patent

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250, recoverable in any United States district court having jurisdiction of the parties.

Nothing in this section shall prevent, lessen, or impeach any other remedy which an owner of an infringed patent has under the provisions of this title, but he shall not twice recover the profit made from the infringement.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 74, 75 (Feb. 4, 1887, ch. 105, §§ 1, 2, 24 Stat. 387, 388).

Language is changed.

CROSS REFERENCES

Damages recoverable in action for copyright infringement, see section 101 of Title 17, Copyrights.

Patented articles marked as such and notice of infringement, see section 287 of this title.

Patents for design generally, see section 171 et seq. of this title.

§ 290. Notice of patent suits

The clerks of the courts of the United States, within one month after the filing of an action under this title shall give notice thereof in writing to the Commissioner, setting forth so far as known the names and addresses of the parties, name of the inventor, and the designating number of the patent upon which the action has been brought. If any other patent is subsequently included in the action he shall give like notice thereof. Within one month after the decision is rendered or a judgment issued the clerk of the court shall give notice thereof to the Commissioner. The Commissioner shall, on receipt of such notices, enter the same in the file of such patent.

(July 19, 1952, ch. 950, 66 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This is the last sentence of R.S. 4921, third paragraph, with minor changes in language.

§ 291. Interfering patents

The owner of an interfering patent may have relief against the owner of another by civil action, and the court may adjudge the question of the validity of any of the interfering patents, in whole or in part. The provisions of the second paragraph of section 146 of this title shall apply to actions brought under this section.

(July 19, 1952, ch. 950, 66 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 66 (R.S. 4918, amended Mar. 2, 1927, ch. 273, § 12, 44 Stat. 1337).

Language is changed.

CROSS REFERENCES

Appeals in interference cases, see section 141 of this title.

Civil action in case of interference, see section 146 of this title.

Proceedings in Patent and Trademark Office on interfering patents, see section 135 of this title.

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, or sold by him, the name or any imitation of the name of the patentee, the patent number, or the words "patent," "patentee," or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made or sold by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word "patent" or any word or number importing that the same is patented for the purpose of deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," "patent pending," or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public—

Shall be fined not more than $500 for every such offense.

(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.

(July 19, 1952, ch. 950, 66 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 50 (R.S. 4901).

This is a criminal provision. The first two paragraphs of the corresponding section of existing statute are consolidated, a new paragraph relating to false marking of "patent applied for" is added, and false advertising is included in all the offenses. The minimum fine which has been interpreted by the courts as a maximum, is replaced by a higher maximum. The informer action is included as additional to an ordinary criminal action.

CROSS REFERENCES

Jurisdiction of district court of the United States of action for fine, penalty or forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Venue of action for fine, penalty or forfeiture, see section 1395 of Title 28.

§ 293. Nonresident patentee; service and notice

Every patentee not residing in the United States may file in the Patent and Trademark

Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.

(July 19, 1952, ch. 950, 66 Stat. 814; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

This section provides for service on non-resident patentees.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

PART IV—PATENT COOPERATION TREATY

Chap.		Sec.
35.	Definitions	351
36.	International Stage	361
37.	National Stage	371

CODIFICATION

Analysis of chapters editorially supplied. Part IV added without adding analysis for Chapters 35, 36, and 37.

CHAPTER 35—DEFINITIONS

Sec.
351. Definitions.

§ 351. Definitions

When used in this part unless the context otherwise indicates—

(a) The term "treaty" means the Patent Cooperation Treaty done at Washington, on June 19, 1970, excluding chapter II thereof.

(b) The term "Regulations", when capitalized, means the Regulations under the treaty excluding part C thereof, done at Washington on the same date as the treaty. The term "regulations", when not capitalized, means the regulations established by the Commissioner under this title.

(c) The term "international application" means an application filed under the treaty.

(d) The term "international application originating in the United States" means an international application filed in the Patent Office when it is acting as a Receiving Office under the treaty, irrespective of whether or not the United States has been designated in that international application.

(e) The term "international application designating the United States" means an international application specifying the United States as a country in which a patent is sought, regardless where such international application is filed.

(f) The term "Receiving Office" means a national patent office or intergovernmental organization which receives and processes international applications as prescribed by the treaty and the Regulations.

(g) The term "International Searching Authority" means a national patent office or intergovernmental organization as appointed under the treaty which processes international applications as prescribed by the treaty and the Regulations.

(h) The term "International Bureau" means the international intergovernmental organization which is recognized as the coordinating body under the treaty and the Regulations.

(i) Terms and expressions not defined in this part are to be taken in the sense indicated by the treaty and the Regulations.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 685.)

CHANGE OF NAME

Reference to the Patent Office in par. (d) deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 11 of Pub. L. 94-131 provided that:

"(a) Section 1 of this Act [enacting this part] shall come into force on the same day as the entry into force of the Patent Cooperation Treaty with respect to the United States. It shall apply to international and national applications filed on and after this effective date, even though entitled to the benefit of an earlier filing date, and to patents issued on such applications.

"(b) Sections 2 to 10 of this Act [enacting section 6(d) and amending sections 41(a)1, 42, 102(e), 104, 112, 113, 120, and 282 of this title] shall take effect on the same day as section 1 of this Act [enacting this part] and shall apply to all applications for patent actually filed in the United States on and after this effective date, as well as to international applications where applicable.

"(c) Applications for patent on file in the Patent Office [now the Patent and Trademark Office] on the effective date of this Act, and patents issued on such applications, shall be governed by the provisions of title 35, United States Code, in effect immediately prior to the effective date of this Act."

[As of Jan. 1, 1977, the Patent Cooperation Treaty has not entered into force with respect to the United States.]

CHAPTER 36—INTERNATIONAL STAGE

Sec.
361. Receiving Office.
362. International Searching Authority.
363. International application designating the United States: Effect.
364. International stage: Procedure.
365. Right of priority; benefit of the filing date of a prior application.
366. Withdrawn international application.
367. Actions of other authorities: Review.
368. Secrecy of certain inventions; filing international applications in foreign countries.

§ 361. Receiving Office

(a) The Patent Office shall act as a Receiving Office for international applications filed by nationals or residents of the United States. In

accordance with any agreement made between the United States and another country, the Patent Office may also act as a Receiving Office for international applications filed by residents or nationals of such country who are entitled to file international applications.

(b) The Patent Office shall perform all acts connected with the discharge of duties required of a Receiving Office, including the collection of international fees and their transmittal to the International Bureau.

(c) International applications filed in the Patent Office shall be in the English language.

(d) The basic fee portion of the international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall be paid on filing of an international application. Payment of designation fees may be made on filing and shall be made not later than one year from the priority date of the international application.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Patent Office in subsecs. (a) to (c) deemed references to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 376 of this title.

§ 362. International Searching Authority

The Patent Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

Reference to the Patent Office in text deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent Office except as otherwise provided in section 102(e) of this title.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

Reference to the Patent Office in text deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 120 of this title.

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent Office when acting as a Receiving Office or International Searching Authority, or both, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Commissioner of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Patent Office and the Commissioner [of Patents] deemed references to the Patent and Trademark Office and the Commissioner [of Patents and Trademarks], respectively, pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

§ 365. Right of priority; benefit of the filing date of a prior application

(a) In accordance with the conditions and requirements of section 119 of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirement of the first paragraph of section 119 of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United

States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Commissioner may require the filing in the Patent Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Commissioner [of Patents] and the Patent Office in subsec. (c), deemed references to the Commissioner [of Patents and Trademarks] and the Patent and Trademark Office, respectively, pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 366 of this title.

§ 366. Withdrawn international application

Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect and shall be considered as not having been made. However, such international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Commissioner, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Patent Office and the Commissioner [of Patents] in subsec. (a), deemed references to the Patent and Trademark Office and the Commissioner [of Patents and Trademarks], respectively, pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 366 of this title.

§ 368. Secrecy of certain inventions; filing international applications in foreign countries

(a) International applications filed in the Patent Office shall be subject to the provisions of chapter 17 of this title.

(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 of this title, whether or not the United States is designated in that international application.

(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent Office when acting as a Receiving Office or International Searching Authority, or both, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 687, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Patent Office in subsecs. (a) and (c) deemed references to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

CHAPTER 37—NATIONAL STAGE

Sec.
371. National stage: Commencement.
372. National stage: Requirements and procedure.
373. Improper applicant.
374. Publication of international application: Effect.
375. Patent issued on international application: Effect.
376. Fees.

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports is required in the case of all international applications designating the United States, except those filed in the Patent Office.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) of the treaty, at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section.

(c) The applicant shall file in the Patent Office—

(1) the national fee prescribed under section 376(a)(4) of this part;

(2) a copy of the international application, unless not required under subsection (a) of this section or already received from the International Bureau, and a verified translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants.

(d) Failure to comply with any of the requirements of subsection (c) of this section, within the time limit provided by article 22(1) or (2) of the treaty shall result in abandonment of the international application.

(e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims and drawings of the application after the national stage has commenced.

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 688.)

Effective Date of Section

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 688, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Change of Name

References to the Patent Office in subsecs. (a) and (c) deemed references to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

Section Referred to in Other Sections

This section is referred to in sections 102, 366, 376 of this title.

§ 372. National stage: Requirements and procedure

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent Office.

(b) In case of international applications designating but not originating in, the United States—

(1) the Commissioner may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

(2) the Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations.

(c) Any claim not searched in the international stage in view of a holding, found to be justified by the Commissioner upon review, that the international application did not comply with the requirement for unity of invention under the treaty and the Regulations, shall be considered canceled, unless payment of a special fee is made by the applicant. Such special fee shall be paid with respect to each claim not searched in the international stage and shall be submitted not later than one month after a notice was sent to the applicant informing him that the said holding was deemed to be justified. The payment of the special fee shall not prevent the Commissioner from requiring that the international application be restricted to one of the inventions claimed therein under section 121 of this title, and within the scope of the requirements of the treaty and the Regulations.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689.)

Effective Date of Section

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Change of Name

References to the Patent Office and the Commissioner [of Patents] deemed references to the Patent and Trademark Office and the Commissioner [of Patents and Trademarks], respectively, pursuant to Pub.

L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 376 of this title.

§ 373. Improper applicant

An international application designating the United States, shall not be accepted by the Patent Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under section 119 of this title, if the United States was not the sole country designated in such international application.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

Reference to the Patent Office in text deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

§ 374. Publication of international application: Effect

The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

§ 375. Patent issued on international application: Effect

(a) A patent may be issued by the Commissioner based on an international application designating the United States, in accordance with the provisions of this title. Subject to section 102(e) of this title, such patent shall have the force and effect of a patent issued on a national application filed under the provisions of chapter 11 of this title.

(b) Where due to an incorrect translation the scope of a patent granted on an international application designating the United States, which was not originally filed in the English language, exceeds the scope of the international application in its original language, a court of competent jurisdiction may retroactively limit the scope of the patent, by declaring it unenforceable to the extent that it exceeds the scope of the international application in its original language.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 689, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

Reference to the Commissioner [of Patents] in subsec. (a) deemed reference to the Commissioner [of Patents and Trademarks], pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

§ 376. Fees

(a) The required payment of the international fee, which amount is specified in the Regulations, shall be paid in United States currency. The Patent Office may also charge the following fees:

(1) A transmittal fee (see section 361(d));

(2) A search fee (see section 361(d));

(3) A supplemental search fee (to be paid when required);

(4) A national fee (see section 371(c));

(5) A special fee (to be paid when required; see section 372(c));

(6) Such other fees as established by the Commissioner.

(b) The amounts of fees specified in subsection (a) of this section, except the international fee, shall be prescribed by the Commissioner. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Commissioner may also refund any part of the search fee, where he determines such refund to be warranted.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 690.)

EFFECTIVE DATE OF SECTION

For effective date of this section as added by Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

CHANGE OF NAME

References to the Patent Office and the Commissioner [of Patents] deemed references to the Patent and Trademark Office and the Commissioner [of Patents and Trademarks], respectively, pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 361, 371 of this title.

TITLE 35—APPENDIX

RULES OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

As amended to January 1, 1977

1. THE COURT

Rule
1.1 Name—Seal.
(a) Name.
(b) Seal.
1.2 Clerk
(a) Office.
(b) Records.
1.3 Sessions.
1.4 Applicability and Waiver of Rules.
(a) Federal Rules of Appellate Procedure.
(b) Applicability.
(c) Waiver.
1.5 Employees and Former Employees Not to Practice.

2. ATTORNEYS AND COUNSELORS

2.1 Admission to the Bar.
(a) Qualification.
(b) Oath.
(c) By Motion.
(d) By Certificate.
(e) Fee.
2.2 Appearances.
2.3 Suspension—Disbarment.

3. CUSTOMS, TARIFF, COMMERCE, AND AGRICULTURE CASES

3.1 Appeal—How Taken.
(a) Notice of Appeal.
(b) Assignment of Errors.
3.2 Application for Permission to Appeal.
(a) How filed.
(b) Answer in Opposition.
(c) Format.
(d) Submission.
3.3 Record on Appeal.
(a) Time for Transmission.
(b) Contents of Record.
(c) Correction or Modification of the Record.
(d) Extension of Time for Transmission of Record.

4. PATENT AND TRADEMARK CASES

4.1 Appeal—Docketing.
(a) Petition.
(b) Time to File.
(c) Docketing.
(d) Failure to File. Election Under 35 USC 141 and 15 USC 1071(a).
4.2 Certification and Transmittal of Record.
(a) Transmittal.
(b) Omissions.
(c) Correction or Modification of the Record.

5. PRACTICE

5.1 Service.
(a) Manner of Service.
(b) Proof of Service.
5.2 Time.
(a) Computation.
(b) Legal Holidays.
(c) Service by Mail—Added Time.
(d) Extension.
5.3 Motions.
(a) Requirements.
(b) Response and Reply.
(c) Format—Number of Copies.
(d) No Hearing.
(e) Procedural Motions.
5.4 Constitutional Questions.
5.5 Agreed Statement.
5.6 Printing of Transcript.
(a) Filing of Transcript—Number of Copies—Composition—Service.
(b) Determination of Contents.
(c) Cost of Printing.
(d) Contents.
(e) Omission of Relevant Papers.
(f) Consolidation of Appeals in Single Transcript.
(g) Submission on Record Without Transcript.
(h) Translations.
5.7 Visual Aids.
(a) Used Below.
(b) Not Used Below.
(c) Disposition.
5.8 Appearance of Printed Transcripts, Briefs, Motions and Other Papers.
(a) In General.
(b) Cover—Color.
(c) Page Size—Customs.
(d) Page Size—Patent and Trademark Office.
(e) Motions etc.
(f) Failure to Conform.
5.9 Briefs—Content.
(a) Cover—Content.
(b) Appellant's Brief.
(c) Appellee's Brief.
(d) Reply Brief.
(e) Citations.
(f) Length of Brief.
(g) Cross-Appeals.
5.10 Filing and Service of Briefs.
(a) Time to File.
(b) Number of Copies.
(c) Extension of Time.
(d) Consequences of Failure to File Briefs.
5.11 Brief of Amicus Curiae.
(a) Filing.
(b) Motion for Leave.
(c) Content.
5.12 Calendaring and Disposition of Cases.
(a) Notice of Argument.
(b) Expedited Hearing.
(c) Disposition on Briefs.
(d) Disposition on the Record.
(e) Cross-Appeals.
(f) Frivolous Appeals.
(g) Opinions—Publication.
5.13 Oral Argument.
(a) Number of Counsel.
(b) Order of Argument.

Rule
(c) Time Allowed for Argument.
(d) Additional Time.
(e) *Amicus Curiae* Argument.
(f) Non-Appearance.
(g) *In Camera* Proceeding.
(h) Opening.
5.14 Form of Typewritten Papers.
5.15 Fees.

6. DISPOSITION OF CAUSES

6.1 Petition for Rehearing.
6.2 Mandates.
(a) When Issued.
(b) Stay.
6.3 Voluntary Dismissal.

1. THE COURT

Rule 1.1 Name—Seal

(a) Name. The name of the court as fixed by Chapter 9 of Title 28 of the United States Code is "United States Court of Customs and Patent Appeals."

(b) Seal. The seal of the court shall contain on its outer edge the legend "Seal of the United States Court of Customs and Patent Appeals" with a star interposed between the end of the word "Appeals" and the beginning of the word "Seal"; and in its center an eagle with spread wings within a border of thirteen stars. The clerk shall be the keeper of the seal which shall be the means of authentication of all records and certificates issued from this court.

Rule 1.2 Clerk

(a) Office. The clerk's office shall be in Washington, D.C., and shall be open for business daily except on Saturdays, Sundays and legal holidays in the District of Columbia, from 8:30 a.m. to 4:30 p.m. [See Rule 5.2].

(b) Records. The clerk shall have custody of the records of the court and shall keep separate docket records of each matter pending before the court, assigning consecutive docket numbers thereto. Every paper filed shall show its filing date and be entered on the appropriate docket record. Any person may, except where restricted by law or where the court otherwise directs, have access to such records. [See 28 USC 2637]. Copies thereof may be obtained on payment of prescribed fees set by the court. [See Rule 5.15]. The clerk may permit any original record to be taken from the court upon such statement of need and on such conditions as he may require.

Rule 1.3 Sessions

Sessions of the court will be held beginning with the first Monday in October of each year and thereafter as announced by the court. Sessions will commence at 10 a.m. Motions for admission to the bar will be entertained at the opening of each session of court. [See Rule 2.1].

Rule 1.4 Applicability and Waiver of Rules

(a) Federal Rules of Appellate Procedure. The Federal Rules of Appellate Procedure shall govern any practice or procedure not specifically covered by these rules.

(b) Applicability. The rules set forth in part 3 are applicable to appeals from the United States Customs Court, the United States International Trade Commission, the Secretary of Commerce, and the Secretary of Agriculture. The rules set forth in part 4 are applicable to appeals from the Patent and Trademark Office. All other rules are applicable to all appeals filed in this court.

(c) Waiver. On motion and for good cause or at the court's own instance, the court may waive or modify any provision of these rules or waive any provision of the Federal Rules of Appellate Procedure.

Change of Name

Reference to the Patent Office has been changed to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a Change of Name note under section 1 of this title.

Rule 1.5 Employees and Former Employees not to Practice

No employee of the court shall engage in the practice of law; nor shall any former employee practice before the court at any time in connection with any case in which the court has made any ruling, or which the court has heard or decided, during his employment.

2. ATTORNEYS AND COUNSELORS

Rule 2.1 Admission to the Bar

(a) Qualification. An attorney who is admitted to practice before the Supreme Court of the United States, the highest court of a state, any United States Court of Appeals, the United States Court of Claims, a United States District Court (including the district courts for Puerto Rico, the Canal Zone, Guam, and the Virgin Islands), the United States Customs Court, or the District of Columbia Court of Appeals, and who is of good moral and professional character is eligible for admission to the bar of this court.

(b) Oath. An applicant shall take or subscribe the following oath or affirmation:

"I, _____ do solemnly swear or affirm that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States. So help me God."

(c) By Motion. An attorney may be admitted in open court by appearing personally with a sponsor who is a member of the bar of this court, who states the applicant's qualifications and moves his admission. [See Rule 1.3].

(d) By Certificate. An attorney may be admitted without appearing personally by furnishing the following evidence of his eligibility: (1) a statement, signed by him and a member of the bar of this court, on a form provided by the clerk; (2) a certificate from a court listed in subsection (a) of this rule, showing he is a member of the bar thereof in good standing; and (3) an executed oath on a form provided by the clerk.

(e) Fee. As a condition of admission, an applicant shall pay the fee provided in Rule 5.15, and this shall entitle him to a certificate of admission.

Rule 2.2 Appearances

The filing of a notice or petition of appeal submitted by a member of the bar of this court shall constitute a notice of appearance by said member. It is not necessary for government counsel to file or serve notices of appearance in cases in which the government is a party. A notice or petition of appeal subscribed by a non-member of the bar of this court may be filed, but no further proceedings shall be had with respect thereto, other than dismissal of the appeal, until the filing of a notice of appearance by a member of the bar of this court. Not later than ten days after notice of the docketing of an inter partes appeal, counsel who will represent the appellee or respondent shall file and serve a notice of appearance. A party desiring to appear without counsel may so notify the clerk in writing and shall be deemed to have appeared on his own behalf.

Rule 2.3 Suspension—Disbarment

When it is shown to the court that any member of its bar has been suspended from practice or disbarred in any other court, or has been guilty of conduct unbecoming a member of the bar of the court, he will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show cause, within such time as the court shall prescribe, why he should not be suspended or disbarred. Upon his response to the order to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court may enter an appropriate order.

3. CUSTOMS, TARIFF, COMMERCE, AND AGRICULTURE CASES

Rule 3.1 Appeal—How Taken

(a) Notice of Appeal. Any party dissatisfied with any appealable decision of the United States Customs Court, the United States International Trade Commission, the Secretary of Commerce, or the Secretary of Agriculture may have a review of said decision (under 28 USC 2601, 19 USC 1337, Headnote 6 to Schedule 8, Part 4 of the Tariff Schedules of the United States, or 28 USC 1545, respectively) by filing a notice of appeal, in duplicate, in the office of the clerk of this court. A copy of the notice shall be served on the adverse parties. When the United States is the appellant, a copy shall be served on the attorney of record or on the party pro se; in all other cases, a copy shall be served on the appropriate government officials or their designees. [See Rule 5.1]. In all cases where the United States is not the appellant, such notice of appeal shall be accompanied by the filing fee specified in Rule 5.15.

(b) Assignment of Errors. The party filing a notice of appeal shall attach to all copies of such notice a concise statement of errors of law and fact complained of.

Rule 3.2 Application for Permission to Appeal

(a) How Filed. The party seeking permission to appeal under 28 USC 1541(b) shall file with the clerk of this court an original and 12 copies of an application which shall include a statement of the facts necessary to an understanding of the controlling question of law determined by the interlocutory order of the United States Customs Court or by the order entered by the chief judge of the United States Customs Court under 28 USC 256(b), a statement of the issue involved or question presented, and a statement of the reasons why the court should grant the application. The application shall also include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, or opinion relating thereto. If the appellant is the United States, a copy shall be served on the attorney of record or the party pro se; in all other cases, a copy shall be served on the Attorney General and the Secretary of the Treasury or their designees. [See Rule 5.1]. In all cases where the United States is not the applicant, the application shall be accompanied by the filing fee specified in Rule 5.15.

(b) Answer in Opposition. Within 10 days after service of the application, an adverse party may file an original and 12 copies of an answer in opposition.

(c) Format. The application and answer thereto may be typewritten but the copies thereof shall be of a clarity equal to that of the original. [See Rule 5.14].

(d) Submission. The application and answer shall be submitted without oral argument unless otherwise ordered.

Rule 3.3 Record on Appeal

(a) Time for Transmission. Upon the filing of a notice of appeal or the granting of an application for permission to appeal, the clerk of this court shall request the appropriate government official to certify the record and transmit it to this court for filing within 30 days from the date of the request unless the time is extended as provided in subsection (d) of this rule.

(b) Contents of Records. The record to be transmitted shall include (1) pleadings, dispositive motions and related memoranda, stipulations, and testimony, (2) the decision, judgment, or order appealed from, any motion for rehearing and supporting papers, and all opinions, memoranda, findings of fact, or conclusions of law related thereto, (3) all exhibits introduced, (4) a certified copy of the docket sheet, and (5) a certified list of the foregoing documents and exhibits, identified with reasonable definiteness.

(c) Correction or Modification of the Record. Prior to the transmittal of the record, if error or omission therein appears with respect to anything material to the case of either party, the parties by stipulation, or the appropriate tribunal or official, may direct that the error or omission be corrected. After transmittal of the record, all questions as to form and content of the record shall be presented to this court and this court, on motion or on its own initiative, may direct that the error or omission be corrected, and, if necessary, that a supplemental record be certified and transmitted.

(d) Extension of Time for Transmission of Record. An extension of time for transmitting the record may be granted by the court for

good cause shown upon application by the appropriate government official referred to in subsection (a) of this rule, within the time originally prescribed.

4. PATENT AND TRADEMARK CASES

Rule 4.1 Appeal—Docketing

(a) Petition. In appeals from the Patent and Trademark Office appellant shall file a petition, addressed to the court, praying that the appeal be heard. The petition shall be accompanied by the filing fee specified in Rule 5.15 [See Rule 2.2].

(b) Time to File. Said petition with proof of service on opposing counsel and a certified copy of the record in the proceeding shall be filed in this court within 40 days from the date the notice of appeal under 35 USC 142 or 15 USC 1071(a) was filed in the Patent and Trademark Office: *Provided,* That the Commissioner of Patents and Trademarks may for sufficient cause set a new period to end on some definite date; and *Provided further,* That in inter partes cases appellant shall, at the time of filing said petition, serve a copy thereof upon appellee or his counsel.

(c) Docketing. An appeal will be docketed upon timely receipt of a petition, the filing fee, and a certified copy of the record. The date of docketing and the appeal number will be transmitted to counsel promptly thereafter.

(d) Failure to File. Election Under 35 USC 141 and 15 USC 1071(a). If said petition of appeal and copy of said record along with prescribed fee shall not be filed within said period of 40 days, or within the period set by the Commissioner, as above provided, or if a notice of election is filed under 35 USC 141 or 15 USC 1071(a), the Commissioner may take such further proceedings as may be necessary to dispose of the case as though no notice of appeal had ever been given. [See Rule 6.3].

CHANGE OF NAME

References to the Patent Office and the Commissioner of Patents have been Changed to the Patent and Trademark Office and the Commissioner of Patents and Trademarks, respectively, pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a Change of Name note under section 1 of this title.

Rule 4.2 Certification and Transmittal of Record

(a) Transmittal. The Commissioner of Patents and Trademarks shall transmit to this court as the record certified copies of those portions designated by the parties. There shall be included the decision or ruling to be reviewed, together with any opinions or memoranda related thereto; the pleadings, if any; the notice of appeal; and the designations or stipulations of the parties as to the contents of the record. A certificate of the transmitting officer identifying the papers with reasonable definiteness shall accompany the record.

(b) Omissions. In making up the record the Commissioner shall omit the following unless expressly designated by a party to be included:

(1) Face and back of file wrappers; formal indorsements on backs of papers.

(2) Printed letterheadings and the like. Examiners' letters and other office letters need show only the paper number short title, date, address, serial or case number, body of letter, and signature.

(3) Notices of publication, hearings, decisions allowance, receipt of fees, and reference slips, interference cards, and the like except when material to some question raised on the appeal, and then merely a memorandum need be made—e.g., "Memorandum: Notice of allowance mailed to————————, address ————————, date ————".

(4) A patent or other instrument already included, but reference shall be made thereto by memorandum at the appropriate place, if necessary.

(c) Correction or Modification of the Record. If error or omission with respect to anything material to the case of either party occurs in the record, the parties by stipulation, or the court on motion or on its own initiative, may direct that the error or omission be corrected, and, if necessary, that a supplemental record be certified and transmitted.

CHANGE OF NAME

Reference to the Commissioner of Patents has been changed to the Commissioner of Patents and Trademarks pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a Change of Name note under section 1 of this title.

5. PRACTICE

Rule 5.1 Service

(a) Manner of Service. Service may be personal or by mail on each adverse party. Personal service includes delivery to a responsible person at the office of counsel. Service by mail is complete on mailing.

(b) Proof of Service. Papers presented for filing and required to be served shall contain an acknowledgment of service by or on behalf of the person served or proof of service in the form of a statement of the date and manner of service and, in the case of personal service, of the name of any person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgement or proof of service but shall require such proof to be filed promptly thereafter.

Rule 5.2 Time

(a) Computation. In computing any period of time, the day from which the period begins to run shall be excluded. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) Legal Holidays. The term "legal holiday" as used in these rules means legal holidays in the District of Columbia, which are:

New Year's Day, January 1.

Inauguration Day, every fourth year.

Washington's Birthday, third Monday in February.

Memorial Day, last Monday in May.
Independence Day, July 4.
Labor Day, first Monday in September.
Columbus Day, second Monday in October.
Veterans Day, fourth Monday in October.
Thanksgiving Day, fourth Thursday in November.
Christmas Day, December 25.
Any day designated as a holiday by the President or the Congress.

When a legal holiday falls on Sunday, the next day is a holiday. When a legal holiday falls on Saturday, the preceding day is a holiday.

(c) Service by Mail—Added Time. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

(d) Extension. When an action is required or allowed at or within a specified time not set by statute, the court or a judge thereof, or the clerk as provided for in Rule 5.3(e), for cause shown, may, upon motion, (1) order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) permit the action to be taken after the expiration of the specified period where the failure to act was excusable.

Rule 5.3 Motions

(a) Requirements. An application for an order or other relief shall be made by filing a motion therefor in writing. The motion shall state with particularity the grounds therefor and the relief sought. All motions shall be filed with proof of service and accompanied by a proposed order. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion.

(b) Response and Reply. Any party may file a response in opposition to a motion within 10 days after service of the motion. Procedural motions under subsection (e) of this rule may be acted upon at any time, without awaiting a response thereto, but any party adversely affected by such action may request reconsideration, vacation, or modification thereof in accordance with subsection (a). A reply may be filed within 5 days after service of a response. Such reply shall be limited to points newly raised in the response and shall not reargue matters presented in the motion. No further responses or replies may be filed.

(c) Format—Number of Copies. Motions, responses, replies and supporting papers, may be typewritten but shall comply with Rule 5.14. If produced by an offset or other printing process they must comply with Rule 5.8(a). Beneath the caption and preceding the body of the motion or supporting paper, there shall be a title succinctly stating the relief sought, for example: *"Motion to Extend Time to File Appellant's Brief."* An original and at least one copy of all motions, responses, replies and supporting papers, shall be filed.

(d) No Hearing. Unless otherwise ordered by the court, no motion shall be presented and argued in open court except motions presented when the appeal is being argued.

(e) Procedural Motions. The clerk may grant for the court procedural motions which are ordinarily granted, when timely filed, served, consented to or unopposed, and which in the opinion of the clerk would not delay or prejudice the work of the court as follows: to dismiss the appeal, to remand the case, to enlarge the time for filing records, briefs, petitions for rehearing, and supporting papers; to stay mandates; to return records in terminated cases to proper officials; to consolidate cases; to make corrections in briefs or other papers filed in this court; to correct or modify the record; to substitute appearances or parties; and for leave to file briefs in typewritten form or in excess by not more than 10 pages of the page limitations provided by these rules. Any interested party adversely affected by such order shall be entitled to reconsideration thereof by the court if a motion is filed within 10 days after the date of the entry of the order. All other motions shall be decided by the court.

Rule 5.4 Constitutional Questions

Any party challenging the constitutionality of an Act of Congress in any suit or proceeding to which the United States is not a party shall, upon the filing of the record or as soon thereafter as the question is raised in this court, give immediate notice in writing to the court of the existence of said question, specifying the provision of the act being challenged. The clerk shall thereupon notify the Attorney General of such challenge.

Rule 5.5 Agreed Statement

When the questions presented by an appeal to this court can be determined without an examination of all the pleadings, evidence, and proceedings below, the parties may submit an agreed statement of the case in lieu of the record as required by Rule 3.3(b) showing: (1) how the questions arose and were decided in the tribunal from which the appeal is taken; (2) the facts averred and proved or sought to be proved which are essential to a decision of the questions by this court; and (3) a concise statement of the issues to be decided and the points to be relied on by appellant. The statement shall be accompanied by a certified copy of the judgment or ruling appealed from and a certified copy of all opinions, if any, in support thereof.

Rule 5.6 Printing of Transcript

(a) Filing of Transcript—Number of Copies—Composition—Service. Within 90 days after the filing of the record in a customs case or the docketing of a case on appeal from the Patent and Trademark Office, the appellant shall file 25 printed copies of a transcript of record which shall contain: (1) the relevant docket entries in the proceeding below; (2) relevant pleadings; (3) the judgments, orders, or decisions in question; (4) all appealed claims; (5) counts in interference; and (6) any other parts of the record to which the parties wish to direct the particular attention of the court. Appellant

shall serve at least 5 copies of the transcript on each of the other parties to the proceeding. If an agreed statement is filed in accordance with Rule 5.5, 25 copies of said statement and accompanying papers shall be filed as provided above.

Where 2 or more parties appeal as in the case of a cross-appeal or a three party interference proceeding and in the absence of an agreement between the parties, the court will designate who, for the purposes of this rule and Rule 5.10(a), shall be regarded as the appellant.

(b) Determination of Contents. The parties are urged to agree on the contents of the transcript. In the absence of an agreement, appellant shall serve on appellee, not later than 20 days after the filing of the record in a customs case or the docketing of an appeal from the Patent and Trademark Office, a designation of the parts of the record which appellant intends to include in the transcript. If appellee believes the parts of the record designated by appellant are not sufficient, appellee shall, within 10 days after service of the designation, serve upon appellant a designation of additional parts to be included in the transcript. Appellant shall include the parts thus designated in the transcript. [See Rules 3.3 and 4.2]. In designating parts of the record for inclusion in the transcript, the parties shall have regard for the fact that the record on file is available to the court and shall not make unnecessary designations.

(c) Cost of Printing. The cost of producing the transcript shall be paid by the appellant. If appellee shall cause matter to be included in the transcript which appellant considers unnecessary, appellant may move to impose on appellee the cost of printing such matter. A statement of costs for such matter shall be submitted to the clerk. The court will act on the motion concurrently with the final decision. In cases where two or more parties appeal and the parties cannot agree on the apportionment of printing costs, the court will apportion them.

(d) Contents. The transcript shall contain a table of contents listing the parts of the record in the order in which they appear therein. Asterisks shall be used to indicate omissions from original documents. Immaterial formal matters shall be omitted. In testimony, a question and its answer may be contained in a single paragraph. The transcript shall indicate the pages of the original record.

(e) Omission of Relevant Papers. When any part of the record which is material to the appeal is inadvertently omitted from the transcript, the clerk, on the written request of any party, duly served, may allow such material to be printed as a supplement to the transcript or as an appendix to a brief.

(f) Consolidation of Appeals in Single Transcript. When more than one appeal is taken from the same judgment, decision, or ruling, a single transcript shall be printed containing all material designated by the parties without duplication.

(g) Submission on Record Without Transcript. The court may dispense with the requirement of a transcript and may permit cases to be submitted on the record under such conditions as the court may direct.

(h) Translations. Whenever any paper transmitted to this court is in a language other than English, without a translation thereof, made under the authority of the lower tribunal or admitted to be correct, the court may order that a translation be supplied.

CHANGE OF NAME

References to the Patent Office have been changed to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a Change of Name note under section 1 of this title.

Rule 5.7 Visual Aids

(a) Used Below. The use in oral argument of illustrative models, specimens, samples, charts, diagrams, and other visual aids is encouraged when it facilitates the presentation. When any visual aid was part of the presentation of the case below and is relied on by any party to the appeal, it shall be placed in the custody of the clerk at least 10 days before the case is heard or submitted. Failure to do so will make its subsequent use discretionary with the court.

(b) Not Used Below. When any visual aid was not part of the presentation of the case below, its proposed use shall be brought to the attention of opposing counsel not less than 15 days prior to the date of hearing. Objections, if any, to the use of such aid shall be in writing, served on all adverse parties, and filed in this court not less than 5 days prior to the hearing date. Use of such aid will be discretionary with the court. This rule shall not preclude agreement of counsel respecting the use of visual aids, or the use of a chalkboard or the equivalent during oral argument.

(c) Disposition. All visual aids in the custody of the clerk, other than official exhibits, must be removed by the parties within 90 days after the case is finally decided. If they are not removed within said period, the clerk may dispose of them.

Rule 5.8 Appearance of Printed Transcripts, Briefs, Motions, and Other Papers

(a) In General. All transcripts, briefs, motions, and other papers printed for the use of the court may be produced by standard typographic printing or by any process capable of producing a clear black permanent image. Carbon copies of any records or briefs may not be submitted without permission of the court. All printed matter except covers must appear in at least 11 point type on opaque, unglazed paper. If footnotes are included, they may not be printed in type smaller than 9 point. Plastic and metal ring-type bindings are not acceptable.

(b) Cover—Color. The cover of appellant's brief shall be blue; appellee's red; of an intervenor or *amicus curiae*, green; of any reply brief, gray. The cover of petitions for rehearing shall be yellow, and the covers of replies thereto shall be brown. The cover of the transcript shall be white. Covers of any other papers shall be so selected as to distinguish from the above.

(c) Page Size—Customs. The transcript of record and briefs in customs cases shall have pages 6⅛ by 9⅛ inches and type matter 4¼ by 7⅛ inches.

(d) Page Size—Patent and Trademark Office. The transcript of record and briefs in appeals from the Patent and Trademark Office shall have pages 7⅝ by 10¼ inches and type matter 4⅛ by 7⅛ inches to permit incorporation of copies of patent and trademark registrations.

(e) Motions, etc. Motions and other papers may be printed at the option of a party and, if printed, the form thereof shall be governed by the provisions of subsections (a), (c), and (d) of this rule.

(f) Failure To Conform. The clerk may refuse to file any transcript, brief, or other paper which has been printed or bound otherwise than in substantial conformity with this rule.

CHANGE OF NAME

Rule 5.9 Briefs—Content

(a) Cover—Content. The front cover of each brief shall contain:

(1) At the top, the title of the document and the designation of the party for whom it is filed (e.g., Brief for Appellant). Immediately beneath the title of the document, a heavy black line shall be printed. Beneath the line, the following matter shall be printed:

(2) The name of this court. [See Rule 1.1(a)].

(3) The docket number and title of the case in this court. [See Rule 1.2(b)]. In the title, appellants, appellees, petitioners, respondents, etc., shall be so designated.

(4) The nature of the proceeding in this court and the name of the court, agency, or board from which the appeal is taken (e.g., appeal from Board of Appeals).

(5) The names, addresses, and telephone numbers of all counsel representing the party on whose behalf the document is filed.

(b) Appellant's Brief. Appellant's brief shall contain sections headed and arranged in the following order:

(1) TABLE OF CONTENTS, with page references, followed by a TABLE OF AUTHORITIES including cases, statutes, textbooks, articles, regulations, rules and the like with references to all pages where they are cited.

(2) STATEMENT OF THE ISSUES. The issues presented separately expressed in short and concise terms.

(3) STATEMENT OF THE CASE. The statement shall first indicate briefly the nature of the case and its disposition below including the statutory basis for review of the judgment, decree, order, or ruling in question. A statement of background may be included. There shall follow a statement of the facts relevant to the issues presented for review with references to the pages of the record at which such facts appear.

(4) ARGUMENT. The argument should be opened with a concise summary of argument which states clearly and succinctly the points made in the brief. The points stated should then be used as headings in the body of the argument.

(5) CONCLUSION. A precise statement of all relief sought.

(c) Appellee's Brief. Appellee's brief shall conform generally to the requirements of subsection (b)(1-5), except that no statement of the issues or statement of the case shall be included unless appellee disagrees with appellant's statements in which event appellee may include restatements as may be deemed necessary.

(d) Reply Brief. A reply brief must be confined to new matter raised in appellee's brief and shall conform generally to the requirements of subsection (b)(1-5).

(e) Citations. Citations of decisions of this court should include the publications in which the decision appears, including, where available, the volume and page of this court's reports, the Federal Reporter, and the United States Patents Quarterly, e.g., *General Instrument Co.* v. *United States*, 59 CCPA 171, C.A.D. 1062, 462 F. 2d 1156 (1972); *In re Nelson*, 47 CCPA 1031, 280 F. 2d 172, 126 USPQ 242 (1960). Where reference is made in a brief to certain matters included in the transcript of record, the page number thereof shall be designated as "(R—)."

(f) Length of Brief. The main briefs of the parties shall not exceed 50 pages each. No reply brief shall exceed 25 pages. Pages containing tables of contents, authorities, glossaries, and appendices containing statutes, rules, and the like shall not be counted in determining length.

(g) Cross-Appeals. If a cross-appeal is filed, the party in the position of plaintiff below shall be deemed appellant for purposes of this rule and Rule 5.10 unless the parties otherwise agree or the court otherwise orders. The single main brief of appellee shall contain the issues and argument involved in his cross-appeal as well as the response to the brief of appellant.

Rule 5.10 Filing and Service of Briefs

(a) Time To File. Appellant's brief shall be served and filed within 60 days after the date on which the transcript is filed. Appellee's brief shall be served and filed within 40 days after service of appellant's brief. Appellant may serve and file a reply brief within 14 days after service of appellee's brief and not later than 5 days prior to hearing. No further briefs may be filed without leave of court.

(b) Number of Copies. 25 copies of each brief shall be filed and 5 copies of each brief shall be served on counsel for each party separately represented.

(c) Extension of Time. No brief will be received after expiration of the time stated in subsection (a) unless such period has been extended as provided in Rule 5.2(d) or good cause is shown.

(d) Consequences of Failure to File Briefs. If an appellant's brief is not filed within the time provided by this rule, or within the time extended, an appellee may ask for dismissal of the appeal or the court may *sua sponte* dismiss the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the court.

Rule 5.11 Briefs of Amicus Curiae

(a) Filing. A brief of *amicus curiae* may be filed only if accompanied by written consent of all parties, or by leave of court on motion under Rule 5.3, and if the brief is presented within the time allowed for the filing of the brief of the party supported. When the United States is

not a party, consent or leave need not be obtained when the brief is presented for the United States or any agency thereof.

(b) Motion for Leave. A motion for leave to file shall be served on all parties, shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable and the relevance of such reasons to the disposition of the case. A party served with such a motion may, within 10 days thereafter, file an objection thereto.

(c) Content. All briefs, motions, and replies filed under this rule shall comply with Rules 5.8, 5.9, and 5.10, except that as to content it shall be sufficient to set forth the interest of *amicus curiae*, the argument, and the conclusion.

Rule 5.12 Calendaring and Disposition of Cases

(a) Notice of Argument. The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, he shall give preference to appeals and other proceedings entitled to preference by law. The clerk shall give notice to all interested parties of the date assigned for the hearing and shall publish a hearing list in advance of each session.

(b) Expedited Hearing. The court may on motion showing good cause of *sua sponte* advance the date for the hearing of any case and may allow the filing of typewritten briefs in lieu of printed briefs in cases so advanced.

(c) Disposition on Briefs. Whenever the court, *sua sponte*, or upon agreement of the parties, concludes that a case is of such character as not to require oral argument, it may, after notice to the parties, proceed to disposition of the case without such argument. In such event, opportunity will be given to respond to a reply brief if one has been filed. Notwithstanding an agreement of the parties to waive oral argument, it may, after notice to the parties, be argued.

(d) Disposition on the Record. Whenever the court, *sua sponte*, or upon agreement of the parties, concludes that a case is of such character as not to require oral argument or briefs and may be decided on the record, the case may be designated for expedited disposition on the record. The clerk will notify the parties of said designation.

(e) Cross-Appeals. A cross-appeal shall be argued with the initial appeal.

(f) Frivolous Appeals. If upon review it shall appear to the court that an appeal is frivolous and entirely without merit, the appeal will be dismissed.

(g) Opinions—Publication. All opinions accompanying decisions of this court shall be provided to the parties, shall be public records of the court and shall be accessible to the public unless based upon proceedings held *in camera* or where a motion to seal the record has been granted under Rule 5.13(g). Opinions which do not add significantly or usefully to the body of law or would not have precedential value will not normally be published. Unpublished opinions shall not be cited as precedent and will not be accepted as such by this court except in support of a claim of *res judicata*, collateral estoppel, or law of the case.

Rule 5.13 Oral Argument

(a) Number of Counsel. Not more than two counsel will be heard for each side in the argument of a case, except by special permission of the court.

(b) Order of Argument. Appellant shall be entitled to open the argument and to conclude it if time remains. Where there is a cross or a third party appeal, the court will advise which party is to open and close.

(c) Time Allowed for Argument. The court will allow such time for oral argument as shall appear to it to enable a fair presentation of the questions involved. Counsel need not use the full time requested or allowed in any appeal and the court may terminate any argument whenever in its judgment further argument is unnecessary. Unless otherwise provided, the maximum time for oral argument shall be as follows:

(1) Customs Appeals: 30 minutes for appellant and 20 minutes for appellee.

(2) Patent Interference Appeals: 30 minutes for appellant and 20 minutes for appellee.

(3) Inter Partes Trademark Appeals: 20 minutes for appellant and 15 minutes for appellee.

(4) Ex Parte Trademark Appeals: 15 minutes for each side.

(5) All Other Appeals: 20 minutes for each side.

(d) Additional time. Counsel may request additional time, not to exceed 15 minutes, by motion filed at least 10 days prior to the date fixed for hearing, stating why the case cannot be adequately presented within the time limitation.

(e) Amicus Curiae Argument. *Amicus curiae* may, with the consent of a party, argue orally on the side of such party, provided that the maximum time permitted under subsection (c) of this rule for oral argument by such party is not extended. Absent such consent, argument by *amicus curiae* may be made only by special leave of court.

(f) Non-Appearance. If appellee fails to appear at the argument, the court will hear argument on behalf of appellant. If appellant fails to appear, the court may hear argument on behalf of appellee. If neither party appears, the appeal will be decided on the briefs.

(g) In Camera Proceeding. In a proper case, where the interests of justice require, and on a convincing showing thereof by motion properly made, the court will sit *in camera*, or seal its record, or both.

(h) Opening. In all cases a full and fair opening must be made.

Rule 5.14 Form of Typewritten Papers

All papers permitted by these rules to be presented without being typographically printed or otherwise duplicated shall be typewritten upon opaque, unglazed paper 8½ by 11 inches, the typing on each page beginning not less than 1½ inches from the top, with side margins of not less than one inch, and the pages stapled or bound only at the upper left hand corner without backing. [See Rule 5.8(a)]. The typed matter, except quotations, must be double spaced.

Rule 5.15 Fees

Pursuant to 28 U.S.C. 1926, the fees to be charged by the clerk of this court are fixed as follows:

(1)	for docketing a case on appeal or review or docketing any other proceeding, except when an appeal is taken by the United States when no payment of fees shall be required.....	$50.00
(2)	for making a copy, except a photocopy, of any record or paper and comparison thereof, per page	1.00
	For making a photocopy of any record or paper, per page.....	.50
	For comparing for certification a copy of any record or paper when such copy is furnished by person requesting its certification, per page	.10
	For comparing with the original thereof any photocopy of any record or paper, when furnished by the person requesting its certification, per page	.05
(3)	for the certification under seal of:	
	(a) a printed record	1.00
	(b) a brief	1.00
	(c) a journal or docket entry, or any other paper, per page	1.00
(4)	for each certificate of membership in the bar.....	1.00
(5)	for an admission to the bar and certificate thereof.....	10.00
(6)	for a duplicate certificate of admission to the bar.....	5.00

6. DISPOSITION OF CAUSES

Rule 6.1 Petition for Rehearing

A petition for rehearing may be filed within 20 days after entry of judgment. The petition shall comply with the printing and service requirements of Rules 5.8, 5.9 and 5.10. It shall be limited to and state points of law or fact which the petitioner believes the court has overlooked or misapprehended and shall not reargue points already considered by the court. Except by permission of the court, a petition for rehearing shall not exceed 10 pages if produced by standard typographic printing or 15 pages if by any other process. Oral argument on the petition is not permitted. Any opposition to the petition must comply with the printing and service requirements for the petition and be filed within 10 days from date of service of the petition.

Rule 6.2 Mandates

(a) When Issued. Mandates shall issue to the lower tribunal after 21 days from the date of judgment. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition. If the petition is denied, the mandate shall issue 7 days after denial of the petition. A copy of the opinion or order of the court shall accompany the mandate.

(b) Stay. A stay of the mandate pending application to the Supreme Court of the United States for a writ of certiorari may be granted upon motion served on all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the stay the petition for a writ of certiorari has been filed, the stay will continue until final disposition of the case by the Supreme Court. Upon receipt of an order of the Supreme Court denying the petition, the mandate of the court shall issue.

Rule 6.3 Voluntary Dismissal

If the parties to any appeal or other proceeding shall sign and file an agreement that the proceeding be dismissed, it shall be dismissed. An appeal may be dismissed on motion of the appellant. If an appeal has not been docketed in this court as provided in Rule 4.1(c), it may be dismissed by the tribunal from which the appeal was taken upon the filing in that tribunal of a stipulation for dismissal signed by all parties, or upon motion by appellant with service upon all other parties.